

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT-III

I.A No. 2828/2024

In

CP No. 569/2020

*Under Section 60(5)(a) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of
the NCLT Rules, 2016.*

HDFC Bank Limited

Having its registered address at:

“HDFC Bank House”, Senapati Bapat Marg,
Lower Parel (W), Mumbai- 400 013
CIN: L65920MH19940LC080618.

... Applicant

Vs

Mr. Kailash Shah, Resolution Professional of
Mitashi Edutainment Private Limited.

Having registered address at

505, 5th Floor, Century Business Centre, Near
World Trade Centre, Ring Road, Surat- 395
002, Gujarat.

... Respondent

In the matter of

Om Logistics Limited

Having registered office Address at

130, Transport Centre, Ring Road, Punjab
Bagh, New Delhi- 110035.

...Operational Creditor

Vs

Mitashi Edutainment Private Limited

Having Registered office Address at:

A-1901, Kailash Business Park Building,
19th Floor, Jethabai Lane No.2, Veer
Savarkar Marg, Vikhroli Park Side,
Vikhroli West, Mumbai- 400 079.

[CIN: U92110MH2000PTC1288090]

...Corporate Debtor

Order pronounced on: 17.09.2025

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri. Hariharan Neelakanta Iyer, Member (Technical)

Appearances:

For the Applicant: Adv. Nausher Kohli, Adv. Apurva Sanglikar,
Aditi Biwas, i/b Vidhii Partners

For the Respondent: Adv. Rohit Gupta, Adv. Shreyansh Desai, Adv.
Prashansa Aggrawal i/b. Deshpande & Co.

Per: Sh. Hariharan Neelakanta Iyer, Member, (Technical)

1. The Interlocutory Application (IA) bearing no. 2828 of 2024 has been filed by HDFC Bank Limited (**'Applicant'**) against, Mr. Kailash Shah (**'Respondent'**) Resolution Professional of Mitashi Edutainment Private Limited (**'Corporate Debtor'**) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**'Code'**) read with Rule 11, of NCLT Rules.
2. The reliefs prayed by the Applicant are reproduced hereinunder:
 - a) *This Tribunal be pleased to direct the Respondent to reclassify the Applicant as a Secured Creditor,*
 - b) *This Tribunal be pleased to, pending hearing and final disposal of the present application, stay hearing of the Resolution Plan in Interlocutory Application No. 1526 of 2022;*

c) That, this Tribunal be pleased to condone delay, if any, in filing the present Interlocutory Application and,

d) That this Tribunal be pleased to pass such other orders/directions as necessary, in the interest of justice.

Facts as per the Application:

3. The Applicant vide sanction letter dated 25.03.2019 sanctioned a Cash Credit Limit towards a sum of Rs. 25,00,00,000/- in favour of the Corporate Debtor ("**Working Facility**").
4. The said working Facility was secured by way of a Deed of Hypothecation dated 30.04.2019 executed by the Corporate Debtor in favour of the Applicant, wherein certain assets were hypothecated in favour of the Applicant which are as follows:

Sr. No	Details of Assets
1.	Stock in Trade
2.	Book debts and receivable
3.	Fixed Deposits

5. The Corporate Insolvency Process under Section 7 of the Code was commenced against the Corporate Debtor vide order dated 20.07.2021 of this Tribunal. The Applicant had filed a claim of Rs. 19,21,89,475.62 dated 06.08.2021, with the IRP. Pursuant thereto, the IRP verified and collated the claims received from the Creditors and had classified the Applicant as a Secured Creditor.
6. The Resolution Professional (**'RP'**) on 12.04.2022 after approval of CoC reclassified the Applicant as an Unsecured Creditor. Thereafter, The RP on 15.06.2022 filed Interlocutory Application No. 2097 of 2022 before this Tribunal seeking reclassification of the Applicant as

"unsecured creditor". The said Interlocutory Application was withdrawn by the RP on 21.06.2024.

7. Being aggrieved by the said reclassification the Applicant has filed the present Application.

Submissions by the Applicant:

8. Section 3(30) defines "secured creditor" as a creditor in whose favour security interest is created.
9. The charge created on the assets of the Corporate Debtor were duly registered by the Corporate Debtor with the Registrar of Companies (i.e. RoC) and the same is reflected in the Index of Charges of the Corporate Debtor as given on the official website of the Ministry of Corporate Affairs. The certificate of registration of charge issued by the RoC is conclusive proof of the charge having been created on the assets of the Corporate Debtor as mentioned in the said certificate in favour of the Applicant.
10. The relevance and evidentiary value of a certificate of registration of charge under the Insolvency & Bankruptcy Code, 2016 (IBC) can be seen from Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016. The said Regulation 21 which deals with 'Proving of Security.
11. Where there exists a certificate of registration of charge duly issued by RoC - the authority which is responsible for registering the charges created on the assets of companies after due verification, the Resolution Professional does not have any powers to negate such charge or deny the security interest created in favour of a lender. The powers of the IRP/RP are limited to the collation of claims and does not extend to any adjudicatory powers in respect of those claims, let alone to adjudicate upon the perfection of creation of security interest by a lender.
12. The Applicant vide its letters dated 20.08.2019 and 27.02.2020 requested Cosmos Bank Limited (**'Cosmos Bank'**) to

issue pari-passu letters on the assets of the company for the Applicant limits amounting to the tune of Rs 250 million. Cosmos Bank vide its letter dated 29.02.2020 informed the Applicant that since the financial indicator of the Corporate Debtor is deteriorating, they cannot consider the request for ceding pari-passu charge on current assets in favour of the Applicant.

13. Even assuming (whilst denying) that the Applicant does not have pari-passu charge over the assets of the Corporate Debtor due to the alleged lack of NOC from Cosmos Bank, the same does not and cannot deny the Applicant of its security interest. By no stretch of imagination can the status of Applicant be that of an unsecured creditor for mere lack of a letter ceding pari-passu charge in its favour as no law or statute bars the creation of such charge.
14. There is no specific law which bars of the creation of the subsequent charge during the existence of the prior charge. Moreover, at no point of time, the primary charge holding lender has objected to the charge reflecting in the Index of Charges of the Corporate Debtor as given on the official website of the Ministry of Corporate Affairs therefore the charge of the Applicant has remained unchallenged.
15. The Applicant states that Respondent on the behest of the Cosmos Bank being one of the secured creditors reclassified the Applicant as "unsecured creditor" in the 7th COC meeting and thereafter filed an Interlocutory Application No. 2097 of 2022 before this tribunal with the prayers seeking reclassification of the Applicant as "unsecured creditor". The Applicant states that however during the hearing of Interlocutory Application No. 2097 of 2022 filed by the RP, the Tribunal expressed its inclination to dismiss the Interlocutory Application No. 2097 of 2022, since prima facie it is not the Tribunal's job to perform the Resolution Professional's duties and pointed out that when the resolution for re-classifying the Applicant's claim was passed initially, the Applicant ought to have challenged the re-classification. The Applicant is therefore filing the present Application as

the cause of action lies with the Applicant who is aggrieved by the said reclassification.

16. Further the verification and collation of claim is the responsibility of the Interim Resolution Professional (**IRP**) as provided under Section 18 of the Code. In the present case, the IRP had collated the claim and had already classified the Applicant as Secured Creditor. The RP after taking charge from the IRP cannot reverify or review the claims which has already been verified by the IRP. Further even assuming (whilst denying) that Applicant does not have pari-passu charge over the assets of the Corporate Debtor due to the alleged lack of letter of ceding the charge from Cosmos Bank, the same does not and cannot deny it of its security interest the Applicant would still be a 'secured creditor' of the Corporate Debtor over the said assets of the Corporate Debtor.

Reply by the Respondent (Resolution Professional)

17. The RP had on 12.04.2022 re-classified the claim of the Applicant from Secured Financial Creditor to unsecured Financial Creditor. The main objective of Applicant behind the present Application is to seek setting aside of the respondent's decision dated 12.04.2022, however only in order to circumvent the delay of 2 years in filing the present Application, the Applicant has resorted to clever drafting and instead of directly challenging the Respondents decision dated 12.04.2022, sought a direction for 'reclassification'. For this reason alone, the present Application is barred by delay and laches. The Applicant has provided no explanation as to what prevented it from filing the present Application within a reasonable period.
18. The CIRP of the Corporate Debtor is already over and the Resolution Plan is approved by the Committee of Creditors and the Application for approval of the said Plan is pending with this Tribunal. At such belated stage the Applicant cannot be classified as the Secured Creditor since the Resolution Applicant has already made provision for making payments to the creditor of the Corporate Debtor. Merely because this Tribunal has not

yet approved the Resolution Plan does not imply that the said plan can go back and forth, thereby making the CIRP an endless process. If this is permitted, it would result in re-opening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon.

19. The Applicant has also failed to make out case as to what prevented the Applicant from filing the present Interim Application within the stipulated time. It is a settled position in law that the CIRP process is a time bound process and the said time can be extended in certain circumstances. The Applicant has also failed to justify the delay caused in impugning the communication dated 12.04.2022 for this reason also the Interim Application deserves to be dismissed.
20. The Cosmos Bank vide letter dated 29.02.2020 indicated to the Applicant that the sanctioned limits availed by the Corporate Debtor were adequate and there was no additional working gap hence the request of the Corporate Debtor for ceding pari-passu charge on assets was rejected. By the said letter it was also indicated that the collateral coverage ratio of the Corporate Debtor with the Cosmos bank was lower than minimum prescribed collateral security coverage hence the request for ceding pari-passu charge on collateral securities was also rejected.
21. The RP vide its email dated 07.01.2022 had called upon the Applicant from time to time to submit copies of Mortgage / Charge documents executed in its favour and a NOC or consent from Cosmos Bank. The Applicant instead of submitting documents merely vide an e-mail dated 18.01.2022 stated that the charge is registered with the ROC and that communication sent by Cosmos Bank as shared by the Respondent does not take away the charge created in favour of the Applicant.
22. Meanwhile in the 6th CoC Meeting held on 09.03.2022 the representative of Cosmos Bank indicated the respondent regarding irregularity in the status of Applicant being incorrectly classified as a Secured Creditor. Cosmos Bank pointed out that it was primary charge holder on the assets

of the Corporate Debtor and the Applicant at the time of providing loan facilities to the Corporate Debtor sought permission from Cosmos Bank to cede pari-passu charge on the current assets of the Corporate Debtor as well on the collateral securities for working capital limits of Rs. 2500 lacs sanctioned by the Applicant which permission was not granted by the Cosmos Bank.

23. In view of the aforesaid the respondent vide an email dated 12.04.2022 indicated to the Applicant that despite requesting to furnish relevant mortgage/ charge documents, NOC and consent from Cosmos Bank vide email dated 07.01.2022 there was no reply given by the Applicant. Thus, on perusing emails sent by cosmos Bank the respondent was provided with correspondences addressed by the Bank whereby the bank categorically denied the request of the Applicant to cede pari-passu charge.
24. Pursuant thereto the Respondent had discussions with the officials of the Applicant. As no concrete clarification was provided, the respondent vide its email dated 12.04.2022 informed the Applicant that the claim admitted by the IRP was admitted on the basis of information and documents provided by the Applicant. However, as the Applicant withheld crucial information from the Respondent about non-receipt of pari-passu charge permission from primary charge holders and failed to attend CoC meetings in which the said issue was discussed and even after sending repeated reminders failed to provide required documents, the Respondent classified the Applicant from Financial Creditor to unsecured Creditor.
25. The Applicant vide its letter dated 15.04.2022 objected to its reclassification as an Unsecured Creditor and requested the Respondent to revisit the said decision. The respondent in response to the said letter reiterated that as per available documents and information the Applicant was classified as Unsecured Creditor and that the Respondent is in process of filing an application before this Tribunal to seek appropriate directions.

26. The Applicant thereafter vide its email dated 16.04.2022 requested the respondent to share email communications sent to the Applicant after 18.01.2022 and minutes of meetings held prior to 7th CoC meeting. As per the request of the Applicant the Respondent vide its email dated 20.04.2022 has provided the Applicant with the necessary documents however the Applicant once again objected to its reclassification as an Unsecured Creditor.
27. Mere registration of charge with ROC does not dilute the security of first charge holder i.e., Cosmos Bank and validate and /or cede charge in favour of the Applicant. In view of the fact that the first charge holder i.e., Cosmos Bank had refused to cede charge in favour of the Applicant, the Applicant cannot claim to be a secured financial creditor.

ANALYSIS & FINDINGS

28. We have heard the Ld. Counsels for the parties and perused the records.
29. The Applicant has submitted that it is a secured financial creditor by virtue of deed of hypothecation dated 30.04.2019 and the registration of charges vide CHG-1 duly taking on record the instrument creating the charge dated 30.04.2019 and which is reflected on MCA as charges registered.
30. It was submitted that, the applicant was initially classified as a secured financial creditor by the IRP but subsequently the RP on 12.04.2022, reclassified the Applicant as an unsecured financial creditor.
31. It was further argued by the Applicant that the RP does not have any powers to negate the charge registered with ROC nor has the powers to deny the security interest created in favour of the Applicant. The power of the RP is limited to collation of claims and does not extend to any adjudicatory powers in respect of those claims. The Resolution

Professional after taking charge from the IRP cannot re-verify or review the claims which have already been verified by the IRP.

32. Further it is submitted that, even if the Applicant, does not have any Pari Passu charge over the assets of the Corporate Debtor due to the lack of NOC from Cosmos Bank the same cannot deprive the Applicant of its valid security interest and that the primary charge holder i.e. Cosmos Bank has not objected to charge created by the applicant which is available on the official portal of MCA.
33. The applicant in the present case has also relied on the following two judgements passed by this Tribunal: -
- I. *J.C. Flowers Assets Reconstruction Pvt. Ltd. Vs. Mr. Vithal M. Dahake & Ors, I.A. No. 1367 of 2022 in CP. 380 (MB) of 2021 decided on 07.08.2024.*
 - II. *Bank of Baroda Vs. Ajit Kumar & Ors. 2024 SCC OnLine NCLT 3583, decided on 08-10-2024.*
34. In response to the submissions made by the Applicant, the RP has, inter alia, stated that the present I.A. is barred by delay and laches, the Applicant has not provided any explanation for not filing the application within a reasonable period and has neither sought condonation of delay nor has explained the cause of delay.
35. It was further submitted that the Applicant withheld crucial information from the Respondent about non-receipt of pari-passu charge permission from primary charge holders and failed to attend CoC meetings in which the said issue was discussed and even after sending repeated reminders and failed to provide required documents therefore the RP classified the claim of the Applicant as Unsecured Creditor.
36. Further, the resolution plan has been approved by the CoC and is now awaiting the approval of this Tribunal and therefore at such a belated

stage the applicant cannot seeks its re-classification as a secured financial creditor.

37. The Respondent has relied on the following case law:

I. JC Flower Asset Reconstruction Pvt Ltd vs. Fanendra Munot I.A. 2560 of 2021 in C.P. (IB) 956 of 2020 decided on 31.03.2023 by NCLT.

38. It was further submitted that the case law relied upon by the Applicant, *Bank of Baroda Vs. Ajit Kumar & Ors* has held that multiple mortgages can be created on the same immovable property subject to order of priority.

39. In light of the above the issue that arises for consideration are: -

i. Whether the Applicant is a Secured Financial Creditor?

ii. Whether RP can re-classify the Applicant as an unsecured creditor after being classified as a secured financial creditor by the IRP?

40. Before we look into the issues, it would be worthwhile to note some of the definitions under the Code.

a) **Section 3(4) “Charge”** means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage;

b) **Section 3(30) “secured creditor”** means a creditor in favour of whom security interest is created;

c) **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:

Provided that security interest shall not include a performance guarantee;

*d) **Section 5(7) “financial creditor”** means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;*

41. Further, to arrive at an opinion, whether the Applicant is Secured Financial Creditor in relation to security interest, it is important to examine Regulation 21 of IBBI (Liquidation Process) Regulations, 2016.

21. Proving security interest.

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

- (a) the records available in an information utility, if any;*
- (b) certificate of registration of charge issued by the Registrar of Companies; or*
- (c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India.*

42. We note that, it is an undisputed fact that the Applicant vide Sanction Letter dated 25.03.2019 had sanctioned Working Capital Facilities (**Facilities**) of Rs. 25 crores to the Corporate Debtor and had executed a Deed of Hypothecation dated 30.04.2019 in favour of the Applicant. The Annexure I to the said sanction letter mentions about security that includes current assets and Immovable Fixed Assets.
43. However, from the perusal of Hypothecation Deed and charge documents, we note that charge was created on the Current Assets of the Corporate Debtor which are as follows:

- “1) All the stock in trade both present and future consisting of raw materials, finished goods, goods in process of manufacturing and any other goods, — as per attached Deed of Hypothecation.*
- 2) All the book debts, amounts outstanding, monies receivable, claims and bills which are now due and owing or which may at any time hereafter during - as per attached Deed of Hypothecation.*
- 3) The Sum of Rs.25,000,000/- (Rupees Twenty-Five Million) deposited by the Security Provider with the Bank at its branch at - as per attached Deed of Hypothecation.”*

44. We note that, charge was created on the current assets of the Corporate Debtor which is registered with the ROC which also reflects in the index of charges of the Corporate Debtor on MCA website. The relevant extract of Form CHG-1 is reproduced herein under:

(f) Nature of facility	Working capital facilities
(g) Date of Disbursement	(DD/MM/YYYY)
(h) Miscellaneous narrative information	
(i) Margin	As stipulated in the Bank's Sanction Letter.
(j) Extent and operation of the charge	Hypothecation by way of 1st Pari Passu Charge on Assets of the Company as mentioned in Column No.14 below to secure as a continuing security for the repayment of Rs.2500 Lakhs together with interest, costs, charges, expenses and other moneys due and payable by the Company to the Bank.
(k) Others	The Charge created in favour of HDFC Bank Ltd shall rank Pari Passu Charge with Cosmos Bank and DCB Bank.

45. Further, it would be relevant to refer to Rule 6 of Companies (Registration of Charges) Rules, 2014.

Certificate of Registration

6. (1) Where a charge is registered with the Registrar under sub-section (1) of Section 77 or section 78, he shall issue a certificate of registration of such charge in Form No.CHG-2.

(2) Where the particulars of modification of charge is registered under section 79, the Registrar shall issue a certificate of modification of charge in Form No. CHG-3.

(3) The certificate issued by the Registrar under sub-rule (1) and sub-rule (2) shall be conclusive evidence that the requirements of Chapter

VI of the Act and the rules made thereunder as to registration of creation or modification of charge, as the case may be, have been complied with.

46. The Applicant has annexed CHG-1 duly taking on record the instrument creating charge dated 30.04.2019 which is reflected on MCA as Charges registered. The Copy of Charges registered on MCA is annexed as Exhibit *E* to the Application. It is noted that the current assets have been provided as a security to the applicant through a hypothecation agreement. According to Rule 6 of Companies (Registration of Charges) Rules, 2014 the certificate issued by the Registrar shall be conclusive evidence. It is noted that the charges created in favour of the Applicant have been duly registered with the MCA. This also proves the existence of security interest as mentioned in Regulation 21 of IBBI (Liquidation Process) Regulations, 2016. The security interest having proved the Applicant qualifies to be a Secured Financial Creditor.
47. Moreover, Cosmos Bank has also not challenged that the Applicant is not a Secured Creditor. Cosmos Bank merely vide its letter dated 29.02.2020 rejected the request of the Applicant to cede pari passu charges on the assets of Corporate Debtor.
48. In the case of ***Volkswagen Finance Limited vs Shree Balaji Printopack Pvt Ltd Company Appeal (AT) (Insolvency) No. 02 of 2020*** the Hon'ble NCLAT while considering the claim rejected by the liquidator in liquidation process under the Code has observed that the financial creditor will have to prove its security interest in manner as embodied in regulation 21 of the Liquidation Regulation and or Section 77 of the Companies Act, 2013.
49. From the material available on record as discussed above, we hold that the applicant has a security interest and therefore needs to be considered as a Secured financial creditor under the Code. Thus, Issue I is answered in affirmative.

Issue II

50. We note that in the present case, the IRP Mr. Manish Shah based on the material available before him, had verified and collated the claim of the applicant as a “secured financial creditor”. However, the RP i.e Mr. Kailash Shah who was appointed subsequently in place of the IRP, re-classified the applicant as “unsecured creditor” on 12.04.2022.
51. We note that the Resolution Professional had filed I.A. 2097 of 2022 on 15.06.2022 before this tribunal seeking to re-classify the claim of Applicant from secured Creditor to Unsecured Creditor. However, the said I.A was withdrawn as observed in the order of this Tribunal on 21.06.2024 which is reproduced below:

“I.A. 2097/2022

On instruction, Ld. counsel for the applicant seeks to withdraw the IA 2097/2022. Accordingly, IA. Is disposed of as withdrawn.”

52. In connection with the above action of RP, it is pertinent to examine whether RP can re-classify a creditor. Therefore, it is relevant to see the relevant provisions of the Code and legal pronouncements. Section 18 of the Code defines the duties of the IRP. The said section is reproduced herein under:

Section 18

“a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—

- (i) business operations for the previous two years;*
- (ii) financial and operational payments for the previous two years;*
- (iii) list of assets and liabilities as on the initiation date; and*
- (iv) such other matters as may be specified;*

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.

(Emphasis supplied)

53. The Code has specified the role of the IRP. The IRP's major role is to receive and collate the claims submitted by the Creditors. Thus, the IRP is entrusted to receive, verify and collate the claims as far as claims are concerned. However, when a Resolution Professional is re-classifying a creditor, he is in fact, adjudicating and changing the classification. The role of an adjudicator is not envisaged for the RP under the Code.

54. In **Union Bank of India vs. M/s Rajdeep Clothing and Advisory Private Limited & Ors. (Company Appeal (AT) (Ins) No.399/2021]**, decided on 05.12.2022, the Hon'ble NCLAT has observed as follows:

*23. ... Now, coming to the powers of IRP/RP, it is apparent that they are responsible for collating the claims, revising the claims from time to time based upon information coming to their possession or being provided by the creditors. **We have found no provision in the CODE or Regulations which permit for review of status of a creditor** as all provisions focus only on the amount of claim. Thus, IRP /RP cannot, on its own, review and reverse his own earlier decision without approval of Adjudicating Authority. We are further of the view that scope of updating exercise is limited and confine to the determination of quantum of claim and, **by no stretch of imagination it gives any power to the IRP /RP to review the status of a creditor.** This position does not mean that once a creditor is categorized, this category cannot be changed. For this purpose, the right approach would be to file an application before the Adjudicating Authority with the relevant material for appropriate directions and the decision of the Adjudicating Authority would resolve that issue. This position will not change even if report of some External Expert has been taken by RP on its own or with the approval of COC. It may not be out of place to mention that this decision of the Adjudicating Authority cannot be challenged by RP though COC or the creditor can challenge the same before the Appellate Authority as they may be an aggrieved party.*

(Emphasis Supplied)

55. Similarly, in **Mr. Avil Menezes, RP of AMW Auto Component Ltd. us. M/s. Shah Coal Put. Ltd. [Company Appeal (AT) (Ins) No. 63/2021, decided on 03.02.2021]**, it was observed by the Appellate Tribunal as follows:

*“In terms of subsection (1) of Section 21, he is only supposed to collate the claims which implies comparison with the record and verification. Unlike a Liquidator who is empowered to admit or reject a claim under Section 40 of the 'I&B Code' against which an appeal lies to the Adjudicating Authority (NCLT), **the Resolution Professional is not vested with any adjudicatory powers** and being a part of the mechanism, all actions taken by him are subject to control of the Adjudicating Authority.*

(Emphasis Supplied)

56. In **Mr. Rajnish Jain vs Manoj Kumar Singh & Ors Company Appeal (AT) (Insolvency) No. 519 of 2020** decided on 18.12.2020 the Hon'ble NCLAT observed that:

*“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.”*

(Emphasis Supplied)

57. The RP has grossly erred in reclassifying the status of the Applicant by assuming the role of an Adjudicating authority when as per law and as per judicial pronouncements, the RP cannot do so. Once an IRP had admitted the claim of the creditor under a particular class, the RP cannot change the status of the creditor.

58. Moreover, it has already been demonstrated in above paragraphs that the Applicant has charge over the current assets of the Corporate Debtor, thereby establishing security interest.
59. In the light of the above discussions, we conclude that the Resolution Professional cannot reclassify the status of the Applicant from secured financial creditor to unsecured financial creditor.
60. Hence, we hold that the applicant is a “Secured Financial creditor” and accordingly we direct the RP to re-classify the applicant as a “Secured Financial creditor”. Accordingly, prayer ‘a’ is granted. It is noted that the application for the approval of the Resolution Plan regarding the Corporate Debtor is pending before this Tribunal. Prayer ‘b’ and ‘c’ have become infructuous.
61. I.A 2828/2024 is allowed and is disposed of as per above direction. No order as to costs.

SD/-

Hariharan Neelakanta Iyer
Member (Technical)
(LRA Apurva)

SD/-

Lakshmi Gurung
Member (Judicial)