

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - IV**

I.A. (IB) No. 940 of 2025

IN

C.P. (IB) No. 1020/MB/2023

*[Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of the
National Company Law Tribunal Rules, 2016.]*

In the matter of:

IFCI Limited

...Applicant

V/s.

**NPV Insolvency Professionals Private
Limited**

...Respondent

In the matter of

RMOL Engineering and Offshore Limited

...Financial Creditor

V/s.

Replenish Reality Private Limited

...Corporate Debtor

Pronounced: 17.03.2026

CORAM:

**SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)**

**SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)**

Appearances: Hybrid

For Applicant : Adv. Nikhil Rajani and Adv. Mrunalini
Deshpande i/b V. Deshpande & Co.
For Respondent : Adv. Avinash R. Khanolkar a/w Adv. Surekha
Yadav and Adv. Khushbu Bhanushali.

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. This IA has been filed under Section 60(5) of the Insolvency and Bankruptcy Code (Code/IBC), by IFCI Limited (Applicant), seeking directions against NPV Insolvency Professionals Private Limited, an Insolvency Professional Entity (Respondent), registered with the Insolvency and Bankruptcy Board of India (IBBI), of Replenish Reality Private Limited (Corporate Debtor), for admission of the Applicant's claim of Rs.520,04,38,946/- as on 17.04.2024, and for their recognition as a Secured Creditor in the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor.
2. **Facts of the case**
 - 2.1. The Corporate Debtor was admitted into CIRP by order of this Tribunal dated 17.04.2024 in Company Petition (IB) No. 1020 of 2023 and an Interim Resolution Professional (IRP) was appointed, who was subsequently replaced by the present Resolution Professional (Respondent).
 - 2.2. The Applicant had extended credit facilities to RMOL Engineering & Offshore Limited (Principal Borrower). To secure the said facilities, the Corporate Debtor, as a third-party mortgagor, created a mortgage over land admeasuring 7.297 hectares situated at Village Dongri, District Jhansi, Uttar Pradesh, by deposit of title deeds on 27.11.2017. The mortgage was supported by a Declaration-cum-Undertaking, and the charge was duly registered.

- 2.3. Upon default by the Principal Borrower, proceedings were initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest act, 2002 (SARFAESI Act). The Principal Borrower was subsequently admitted into liquidation by the NCLT, Ahmedabad Bench, and the Applicant's claim therein was admitted by the Liquidator.
- 2.4. After commencement of CIRP of the Corporate Debtor, the Applicant submitted its claim in Form F on 30.05.2024 as a creditor other than a financial or operational creditor, asserting its rights as a secured creditor by virtue of the mortgage created by the Corporate Debtor.
- 2.5. The claim was rejected by the Respondent *vide* emails dated 10.10.2024 and 18.12.2024, *inter alia*, on the grounds that no funds were disbursed to the Corporate Debtor, no guarantee was extended by it, and that the Applicant had relinquished its security in the liquidation of the Principal Borrower.

3. Submissions of the Applicant

- 3.1. The Applicant submits that in or around March 2013, RMOL Engineering & Offshore Limited (formerly known as Reliance Marine & Offshore Private Limited and formerly Pipavav Marine & Offshore Limited) approached the Applicant seeking sanction of corporate loan facilities aggregating to Rs.202.22 crore. The said credit facilities were sanctioned by the Applicant for the specific purpose of acquiring six companies owning parcels of land situated at Jhansi, Uttar Pradesh. The sanction and terms of the aforesaid credit facilities were duly recorded under a Corporate Loan Agreement executed between the Applicant and the Principal Borrower on 30.03.2013.
- 3.2. The aforesaid credit facilities were, *inter alia*, secured by the Corporate Debtor by creation of an exclusive first charge by way of mortgage over all that piece and parcel of land admeasuring 7.297 hectares (approximately 18 acres), together with all buildings, structures, erections and constructions, existing or to be constructed thereon, situated at land bearing Khata No. 163 and Khata No. 164, Village Dongri, Block Babina, District Jhansi, State of Uttar Pradesh

(Subject Property). The said mortgage was created by the Corporate Debtor on 27.11.2017 to secure the repayment of the credit facilities availed by the Principal Borrower.

- 3.3. In furtherance thereof, the Corporate Debtor executed a Declaration-cum-Undertaking dated 24.11.2017, whereby it unequivocally represented and confirmed that the Subject Property was free from all encumbrances and was not subject to any lien, charge, *lis pendens*, attachment or any other judicial or quasi-judicial process. The Corporate Debtor further affirmed that it was in exclusive, uninterrupted, and undisputed possession of the Subject Property. It was also expressly undertaken that, in the event of default by the Principal Borrower, the Applicant would be entitled to enforce the mortgage and recover its dues, and that the Corporate Debtor would not raise any objection whatsoever before any court, authority, or tribunal.
- 3.4. The Applicant submits that the creation of the aforesaid mortgage was further evidenced by the execution of a Memorandum of Entry dated 27.11.2017, recording the deposit of title deeds of the Subject Property by the Corporate Debtor with a clear intent to create a mortgage thereon. Under the said Memorandum of Entry, the Applicant was appointed to act as agent and to retain the title deeds as security, thereby creating a first *pari passu* charge to secure the credit facilities availed by the Principal Borrower.
- 3.5. During the subsistence of the aforesaid security interest, the Applicant initiated insolvency proceedings against the Principal Borrower by filing Company Petition (IB) No. 171 of 2017 under Section 7 of the Code before the National Company Law Tribunal, Ahmedabad Bench, which came to be admitted *vide* order dated 21.08.2019.
- 3.6. Applicant states that, upon persistent default in repayment of the credit facilities by the Principal Borrower, its account was classified as a Non-Performing Asset. Consequently, the Applicant initiated measures under the SARFAESI Act, to enforce its security interest and issued a demand notice dated 26.11.2020 under Section 13(2) of the SARFAESI Act for a sum of Rs. 281,46,62,567.54. The said

demand notice was also duly addressed to the Corporate Debtor in its capacity as mortgagor of the Subject Property.

- 3.7. Subsequently, the NCLT, Ahmedabad Bench, by order dated 06.12.2021, passed under Section 33 of the IBC, admitted the Principal Borrower into liquidation.
- 3.8. Upon commencement of the CIRP of the Corporate Debtor, the Applicant submitted its claim on 30.05.2024 in Form F, being the prescribed form for creditors other than financial or operational creditors. The Applicant claimed an amount of Rs.520,04,38,946/- being the total outstanding as on 17.04.2024, along with supporting documents including statements of account and loan and security documents. Thereafter, the IRP *vide* email dated 01.07.2024 sought additional documents, repeatedly calling upon the Applicant to furnish documents which were wholly irrelevant and unconnected, including deeds of guarantee, internal approvals, authorisations of the Corporate Debtor, acknowledgements, and invocation of guarantees.
- 3.9. The Applicant responded *vide* a detailed point-wise reply dated 16.08.2024, categorically clarifying that it had never claimed the Corporate Debtor to be a guarantor and that its claim was correctly filed in Form F. The Applicant further informed that the charge created over the Subject Property stood duly registered and was reflected on the official portal of the Ministry of Corporate Affairs.
- 3.10. The Applicant was thereafter informed that by order dated 13.08.2024, this Tribunal had appointed the Respondent as Resolution Professional in place of the IRP. Despite repeated emails dated 29.08.2024 and 17.09.2024 seeking an update on the status of its claim, the Respondent, by email dated 18.09.2024, alleged that the Applicant had relinquished its security in the liquidation proceedings of the Principal Borrower and called upon the Applicant to show cause as to why its claim should not be rejected on that basis.
- 3.11. The Applicant promptly replied on 20.09.2024, clarifying that the liquidation proceedings of the Principal Borrower were independent and distinct from the

CIRP of the Corporate Debtor, and that relinquishment of security, if any, in the liquidation of the Principal Borrower had no bearing whatsoever on the Applicant's rights against the Subject Property owned by the Corporate Debtor.

- 3.12. Despite the aforesaid clarification, the Respondent issued an email dated 10.10.2024 rejecting the Applicant's claim. The Applicant submits that the said rejection was carried out in a mechanical and perfunctory manner, without any appreciation of the nature of the debt or the security interest involved.
- 3.13. The Applicant once again clarified that relinquishment of security in the liquidation of the Principal Borrower related solely to the assets of the Principal Borrower and could not extend to third-party collateral owned by the Corporate Debtor. It was reiterated that the Applicant had not filed its claim as a financial creditor and that the claim was correctly submitted in Form F.
- 3.14. Thereafter, the Respondent issued another impugned email dated 18.12.2024 stating that upon detailed examination and legal advice, the Applicant's claim stood rejected, while advising the Applicant to approach this Tribunal if aggrieved.
- 3.15. The Applicant, *vide* email dated 02.01.2025, requested reconsideration of the rejection in light of the judgment of the Hon'ble Supreme Court dated 20.12.2024 in *China Development Bank v. Doha Bank QPSC & Ors.* The Respondent, however, replied on 13.01.2025, reiterating that the claim was rejected on the ground that no funds were disbursed to the Corporate Debtor and that the Corporate Debtor had not furnished any guarantee.
- 3.16. The Applicant submits that the aforesaid reasoning is wholly misconceived, as it has never been the Applicant's case that any amount was disbursed to the Corporate Debtor. The Applicant has consistently asserted that the Corporate Debtor is a third-party mortgagor who created security over the Subject Property to secure the loans availed by the Principal Borrower.

- 3.17. The Applicant submits that the Respondent has acted in complete disregard of the law laid down by the Hon'ble Supreme Court in *Vistra ITCL (India) Limited v. Dinkar Venkatasubramanian & Ors.* [(2023) 7 SCC 324], wherein denial of rights of a secured creditor holding a security interest was held to be contrary to the scheme of Sections 30, 31, 52, and 53 of the IBC. The Hon'ble Supreme Court held that such a secured creditor is entitled to recognition and protection of its security interest.
- 3.18. In view of the settled legal position, the Applicant submits that its security interest cannot be deemed to have been extinguished during the CIRP of the Corporate Debtor, and that, even if its status as a financial creditor is not accepted, it is at the very least entitled to payment commensurate with the value of the secured asset.
- 3.19. In the said position in law as settled by the Hon'ble Supreme Court, the Applicant submits that its security interest in the secured assets cannot be deemed to be extinguished during the CIRP of the Corporate Debtor and the Applicants being a Secured Creditor ought to be paid not fully but at least the commensurate value as per the security interest held in the event their status as Financial Creditor is not accepted and therefore the impugned emails of the Respondents are contrary to the said settled position in law.
- 3.20. It is therefore submitted that the Corporate Debtor, having validly created a security interest in favour of the Applicant, and the Principal Borrower having defaulted in repayment, the Applicant is legally entitled to enforce the mortgage and realise the value of the Subject Property, and must accordingly be treated as a secured creditor to the extent of the value thereof.
- 3.21. In this background, the Applicant has filed the present Application.

4. Submissions of the Respondent

- 4.1. The Respondent submits that the Applicant has not extended any financial assistance whatsoever to the Corporate Debtor. It is further, not the case of the

Applicant that the Corporate Debtor has furnished any guarantee in favour of the Applicant in respect of the credit facilities availed by the Principal Borrower. Consequently, the question of the invocation of any such guarantee does not arise.

- 4.2. The Respondent submits that the sole case of the Applicant is that the Corporate Debtor mortgaged a part of its assets in favour of the Applicant to secure the credit facilities availed by the Principal Borrower. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court of India in *Anuj Jain, IRP for Jaypee Infratech Ltd. v. Axis Bank & Ors.*, [(2020) 8 SCC 401], wherein, in similar circumstances, the Hon'ble Apex Court held that such a creditor cannot be treated as a financial creditor of the corporate debtor during the CIRP. Accordingly, the Respondent submits that the Applicant is not a financial creditor of the Corporate Debtor and that the rejection of the Applicant's claim is legally justified.
- 4.3. The Respondent submits that the present Application is not maintainable, as there exists no valid or legally enforceable claim of any nature whatsoever against the Corporate Debtor. The Applicant has admittedly extended credit facilities only to the Principal Borrower and has taken recovery measures solely against the Principal Borrower upon its default.
- 4.4. It is submitted that although the Applicant has issued a notice under Section 13(2) of the SARFAESI Act, no further steps have been taken against the Corporate Debtor. Mere issuance of a demand notice under Section 13(2) of the SARFAESI Act does not amount to enforcement of a security interest.
- 4.5. The Respondent submits that upon commencement of the CIRP of the Corporate Debtor, the IRP took custody and control of the affairs of the Corporate Debtor, at which time possession of the secured asset remained with the management of the Corporate Debtor. Even upon the Respondent assuming charge as Resolution Professional, possession of the secured asset was never with the Applicant. The Applicant has admittedly not taken any measures under

Section 13(4) of the SARFAESI Act and has, therefore, never enforced its security interest in accordance with law.

- 4.6. The Respondent further places reliance on a letter dated 13.09.2024 issued by the Applicant under Section 13(4) of the SARFAESI Act, addressed to the Bundelkhand Industrial Development Authority (BIDA), wherein the Applicant informed BIDA that it had taken possession of the lands owned by Budding Mercantile Company Private Limited and Winsome Realty Private Limited, which were also provided as collateral security for the credit facilities availed by the Principal Borrower. Significantly, the said communication does not record that the Applicant has taken either symbolic or physical possession of the security interest in respect of the Corporate Debtor.
- 4.7. In view of the foregoing, the Respondent submits that the Applicant has not, till date, enforced its security interest in accordance with the provisions of the SARFAESI Act and, in such circumstances, cannot be treated as a creditor of the Corporate Debtor.
- 4.8. The Respondent relies upon the judgments of the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi, in Company Appeal (AT) (Insolvency) No. 961 of 2022 decided on 05.01.2023 and Company Appeal (AT) (Insolvency) No. 1278 of 2024 decided on 16.07.2024, wherein it has been held that issuance of a notice under Section 13(2) of the SARFAESI Act is merely a procedural step and does not amount to invocation of a guarantee.
- 4.9. The Respondent further submits that the provisions of Section 13(2) of the SARFAESI Act are merely enabling in nature, permitting a secured creditor to initiate further measures under Section 13(4) thereof upon failure of the borrower to discharge its liability within the stipulated period, and that Section 13(4) operates independently and requires separate compliance.
- 4.10. The Respondent submits that the Applicant's claim has been rightly rejected. Under Section 3(10) of the Code, a 'creditor' is defined as a person to whom a debt is owed. In the present case, a debt can be said to be owed by the

Corporate Debtor to the Applicant only upon enforcement of the security interest, which has admittedly not occurred. Consequently, no debt is owed by the Corporate Debtor to the Applicant.

- 4.11. It is further submitted that the Applicant has claimed an amount of Rs.520,04,38,946/- against the Corporate Debtor, whereas an amount of Rs.342,69,48,965/- has already been admitted in the liquidation proceedings of the Principal Borrower pending before the NCLT, Ahmedabad Bench. The Respondent further submits that the Applicant has already enforced its security interests created by two other entities in respect of the same credit facilities.
- 4.12. The Respondent submits that the present Application is also not maintainable in view of the law laid down by the Hon'ble Supreme Court in *Ghanshyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. & Ors.* [(2021) ibclaw.in 54 SC], wherein it has been categorically held that any claim not included in the list of creditors prior to approval of the resolution plan stands extinguished upon such approval.
- 4.13. The Corporate Debtor was admitted to CIRP on 17.04.2024, and the IRP issued the public announcement on 22.04.2024. The Applicant lodged its claim in Form F on 30.05.2024. Thereafter, the IRP sought additional documents *vide* communication dated 01.07.2024, which the Applicant furnished on 16.08.2024. Upon examination of the said documents, the Respondent was not satisfied as to the admissibility of the claim and, after obtaining legal opinion, rejected the claim *vide* email dated 10.10.2024.
- 4.14. The Respondent submits that it was incumbent upon the Applicant to approach this Tribunal immediately upon receipt of the communication dated 10.10.2024, if aggrieved thereby. However, the Applicant failed to do so and instead continued to correspond with the Respondent.
- 4.15. In the interregnum, the Respondent invited resolution plans for the Corporate Debtor, which were received on 29.10.2024. The Committee of Creditors approved the resolution plan in its 9th meeting held on 09.01.2025. The

approved resolution plan was thereafter filed with this Tribunal on 14.01.2025 as IA (IBC) (Plan) No. 25 of 2025.

- 4.16. It is pertinent to note that during the period from 10.10.2024 to 14.01.2025, the Applicant did not challenge the rejection of its claim. The present Application was filed only on 21.01.2025, i.e., eight days after the filing of the resolution plan.
- 4.17. The Respondent submits that the Applicant, having slept over its alleged rights for a considerable period, cannot now be permitted to agitate its grievances at this belated stage.
- 4.18. Accordingly, the Respondent submits that the Application is wholly devoid of merit, not maintainable in law, and liable to be dismissed.

5. Rejoinder by the Applicant

- 5.1. The Applicant, in its Rejoinder dated 07.04.2025, submits that the Reply filed by the Respondent does not disclose any substantial defence and fails to rebut the averments made in the present Application.
- 5.2. The Applicant submits that the Respondent and the erstwhile IRP have failed to appreciate the true nature of the Applicant's claim. It is reiterated that no amount was ever disbursed by the Applicant to the Corporate Debtor. The Corporate Debtor stood merely as a third-party mortgagor, having mortgaged its immovable property to secure the loans availed by the principal borrower.
- 5.3. The Applicant further submits that Section 3(4) of the Code, a 'charge' includes a mortgage. Further, Section 58 of the Transfer of Property Act, 1882 defines a mortgage as a transfer of an interest in immovable property to secure payment of a debt or performance of an obligation giving rise to pecuniary liability. In the present case, the Corporate Debtor, as mortgagor, has bound itself to secure the Applicant's claim. In terms of Section 3(11) of the Code, such liability constitutes a 'debt'.

- 5.4. Accordingly, the Applicant has rightly lodged its claim as a secured creditor other than a financial or operational creditor, based on the mortgage and charge created over the Corporate Debtor's assets. The Applicant never claimed to be a financial creditor, as is evident from the claim filed in Form F and clarified to the IRP via email dated 16.08.2024. The charge created in favour of the Applicant is duly registered with the Ministry of Corporate Affairs.
- 5.5. The Applicant further states that the reliance placed by the Respondent on the judgment in *Anuj Jain* (supra) is wholly misplaced, as the Applicant has not sought recognition as a financial creditor. The said judgment is inapplicable to a secured creditor seeking recognition of its security interest.
- 5.6. The Respondent has acted contrary to the law laid down by the Hon'ble Supreme Court in *Vistra ITCL (India) Limited v. Dinkar Venkatasubramanian & Ors.* [(2023) 7 SCC 324], wherein it has been held that a secured creditor cannot be deprived of its security interest during the CIRP and must be dealt with in accordance with Sections 30(2) and 31 of the Code.
- 5.7. In view of the settled position of law, the Applicant's security interest cannot be deemed to be extinguished during the CIRP. Even if the Applicant is not treated as a financial creditor, it is at least entitled to receive the commensurate value of its security interest. Notably, the mortgaged land measuring approximately 7.297 hectares is proposed to be acquired by the Bundelkhand Industrial Development Authority, with an estimated value of Rs.4.38 crore.
- 5.8. The Applicant was never served with notice of any meeting of the Committee of Creditors, or was it afforded an opportunity of being heard before its claim was rejected by the Respondent. Such action is arbitrary and contrary to the law laid down by the Hon'ble Supreme Court in *Greater Noida Industrial Development Authority v. Prabhjit Singh Soni & Anr.* [(2024) ibclaw.in 53 SC]
- 5.9. The contention that the Applicant holds no claim against the Corporate Debtor is wholly untenable, as the Corporate Debtor admittedly created a mortgage as a third-party mortgagor to secure the Applicant's dues.

- 5.10. As regards the allegation that the Applicant has not enforced its security interest, it is submitted that the Applicant has taken measures under the SARFAESI Act, , including issuance of a possession notice dated 25.03.2023 under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002. Symbolic possession has been taken, which in law is sufficient, and the secured asset thereafter remains in *custodia legis*.
- 5.11. The rejection of the Applicant's claim is mechanical, arbitrary, and based on a complete misapprehension of the nature of the Applicant's debt and security interest.
- 5.12. The Resolution Plan has only been approved by the CoC and has yet to be approved by this Tribunal. Therefore, reliance placed on the proposed Resolution Plan to deny the Applicant's lawful claim is premature and misconceived.
- 5.13. The allegation that the Applicant slept over its rights is incorrect. The Applicant was informed of the rejection of its claim for the first time only by email dated 18.12.2024, after the Applicant had approached this Tribunal without any delay.

6. Analysis and Findings

- 6.1. We have heard the Ld. Counsel for the Applicant and Respondent, and perused the documents on record.
- 6.2. It remains undisputed that the Corporate Debtor created a mortgage over its immovable property in favour of the Applicant to secure the credit facilities availed by the Principal Borrower. This is further evidenced by the deposit of title deeds by the Corporate Debtor, Declaration-cum-Undertaking executed by the authorised person of the Corporate Debtor, and the registration of a charge with the RoC.
- 6.3. A perusal of the material placed on record also shows that CIRP in respect of the Corporate Debtor was initiated on 17.04.2024. In response to the public notice issued by the IRP on 22.04.2024, the Applicant submitted a claim for

Rs.520,04,38,946/- on 30.05.2024 in Form F, which is prescribed for creditors other than financial creditors and operational creditors. The Applicant annexed documents with the claim demonstrating that it has an exclusive first charge on the Subject Property admeasuring 7.297 hectares owned by the Corporate Debtor, and stated that on account of the default committed by the Principal Borrower, a demand notice under Section 13(2) of the SARFAESI Act was issued on 26.11.2020, and a possession notice was issued on 25.03.2023. Subsequent communications exchanged between the IRP and the Applicant included emails dated 01.07.2024, 16.08.2024, 21.08.2024, and 26.08.2024; however, no decision was taken by the IRP on the claim. Upon replacement of IRP with the Respondent, in accordance with the order dated 13.08.2024, the Applicant sought to ascertain the status of its claim. By an email dated 18.09.2024, the Respondent informed the Applicant that, due to the Applicant's relinquishment of its security interest in the liquidation proceedings concerning the Principal Borrower, the claim in the resolution process of the Corporate Debtor may not be admissible. Accordingly, the Applicant was requested to provide an explanation as to why the claim against the Corporate Debtor should not be rejected. In response, the Applicant asserted that the resolution process of the Corporate Debtor is independent of the liquidation process of the Principal Borrower and that the secured assets of the Corporate Debtor cannot be dealt with in the liquidation process of the Principal Borrower. Nevertheless, the Respondent rejected the Applicant's claim *vide* emails dated 18.12.2024 and 13.01.2025. Consequently, this Application was filed on 13.02.2025, challenging that the claim was wrongly rejected.

- 6.4. The primary ground for the rejection of Applicant's claim by the Respondent is that no financial assistance was provided by the Applicant to the Corporate Debtor. Furthermore, it is not established that the Corporate Debtor has extended any guarantee in favour of the Applicant qua the credit facilities granted to the Principal Borrower. According to the Respondent, the only contention of the Applicant is that the Corporate Debtor has mortgaged part of its assets to secure the facilities granted to the Principal Borrower. In support of

this argument, the Respondent has relied on the judgement of the Hon'ble Supreme Court in *Anuj Jain (supra)*, and relied on the following paragraphs:

“47. As noticed, the root requirement for a creditor to become financial creditor for the purpose of Part II of the Code, there must be a financial debt which is owed to that person. He may be the principal creditor to whom the financial debt is owed or he may be an assignee in terms of extended meaning of this definition but, and nevertheless, the requirement of existence of a debt being owed is not forsaken.”

“54. Kusum has also been repeatedly referred by the respondents in support of their contentions that because of the transactions of mortgage, the corporate debtor JIL owes them the mortgage debt as a guarantee obligation and hence, it falls within the ambit of “financial debt” within the meaning of Section 5(8) of the Code.”

6.5. Before resorting to this contention, it is necessary to notice some of the definitions contained in Section 3 of the Code.

“3. Definitions. - In this Code, unless the context otherwise requires,-

xxx

(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;

xxx

(6) “claim” means –

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

xxx

(10) “creditor” means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;

(11) “debt” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;

xxx

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

(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;”

- 6.6. It is pertinent to notice that the definition of ‘creditor’ encompasses ‘secured creditors’, and the term ‘default’ includes non-payment of debt by either the

'debtor' or the corporate debtor, as the case may be. The definitions of 'debt', 'charge', and 'security interest' are notably broad in scope. Regarding the submission of claims, Regulation 9A of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (CIRP Regulations) specifically provides that a person claiming to be a creditor, apart from financial creditors, operational creditors, operational creditors in a class, workmen, and employees, shall file their claim in Form F of the Schedule to the CIRP Regulations. A bare reading of the definitions and the aforesaid Regulation 9A leaves no manner of doubt that for the purpose of filing a claim, a creditor other than operational creditor, financial creditor or creditor in a class is also entitled to submit claims with proof to the interim resolution professional or the resolution professional. In other words, the creditor need not be a financial creditor or an operational creditor to submit a claim. Thus, in the instant case, the Applicant, being a secured creditor is entitled to file a claim with the resolution professional.

- 6.7. The Respondent's reliance on the judgement of *Anuj Jain* (supra) is misplaced. The said judgment considered the issue of whether the lenders of JAL, the principal borrower, could be classified as financial creditors of the corporate debtor. Further, the Hon'ble Supreme Court also held as under:

'50.2. 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. Differently put, if a corporate debtor has given its property in mortgage to secure the debts of a third party, it may lead to a mortgage debt and, therefore, it may fall within the definition of "debt" under section 3(10) of the Code. However, it would remain a debt alone and cannot partake the character of a "financial debt" within the meaning of Section 5(8) of the Code.'

In the present case, the Applicant does not seek recognition as a financial creditor but only seeks admission of its claim as a secured creditor holding a valid security interest.

- 6.8. Further, in *Vistra ITCL* (supra), the Hon'ble Supreme Court held that a secured creditor cannot be denied from realising its security interest and ought to be considered a creditor of the corporate debtor.
- 6.9. The next contention raised by the Respondent is that, besides the issuance of a notice under Section 13(2) of the SARFAESI Act, the Applicant has not taken any steps against the Corporate Debtor. According to the Respondent, mere issuance of a notice under Section 13(2) of the SARFAESI Act does not amount to enforcement of the security interest by the Applicant. To buttress this submission, it is submitted that the IRP has taken possession of the assets, including the Subject Property, from the erstwhile management of the Corporate Debtor, which establishes that the Applicant has never enforced the security interest in terms of the SARFESI Act.
- 6.10. On the contrary, the Applicant asserts that it has adopted measures in accordance with the SARFAESI Act with respect to the mortgaged property and has issued a possession notice dated 25.03.2023 pursuant to Rule 8(1) of the Security Interest (Enforcement) Rules, 2002. Nonetheless, the Respondent has completely disregarded the measures taken by the Applicant, and thus, the contention is also devoid of any merit and is inconsistent with the established records.
- 6.11. Upon careful consideration of the rival contentions based on the available records, it is evident that the claim form indicates the issuance of a demand notice under Section 13(2) of the SARFAESI Act on 26.11.2020, and a possession notice on 25.03.2023, along with possession notice issued by the Applicant, which states that it has taken symbolic possession of the properties mortgaged by the Corporate Debtor in its favour. It is a settled position of law that the expression 'possession' would connote either actual or constructive possession, and which in turn, would include legally being in possession, though

factually not being in physical possession. Therefore, the act of the Respondent taking physical possession of the Subject Property from the erstwhile management of the Corporate Debtor does not invalidate the symbolic possession asserted by the Applicant. Furthermore, there is no doubt whatsoever that the Applicant has initiated measures for the enforcement of its security interest created by the Corporate Debtor.

- 6.12. Regulations 9A of the CIRP Regulations contemplates that the existence of other claims may be proved on the basis of relevant documents sufficient to establish the claim, including the documentary evidence demanding satisfaction of the claim. The Applicant has annexed the security documents and stated that the Corporate Debtor has registered a charge on the Subject Property with the RoC. It is noteworthy that the Respondent has not contested the creation of mortgage in favour of the Applicant. Based on the aforesaid, we are of the considered view that the security documents coupled with the notice issued under Section 13(2) of the SARFAESI Act on 26.11.2020 and the possession notice dated 25.03.2023 sufficiently establish the outstanding debt owed to the Applicant and the enforcement of the security interest created by the Corporate Debtor. Consequently, we find no merit in the contention of the Respondent.
- 6.13. Another contention raised by the Respondent is that the Applicant has filed a claim in the liquidation process of the Principal Borrower and has also relinquished its security interest in that process. Consequently, the Applicant is not entitled to pursue a claim for the said debt in respect of the Principal Borrower against the Corporate Debtor.
- 6.14. Per contra, the Applicant states that the liquidation process of the Principal Debtor is separate and distinct from the CIRP of the Corporate Debtor. The relinquishment of the security interests created by the Principal Borrower does not pertain to the assets of the Corporate Debtor. This distinction is evident from the fact that the immovable property of the Corporate Debtor, being a third-party collateral, cannot be sold in the liquidation process of a different company.

- 6.15. There is no doubt whatsoever that the liquidator appointed for the Principal Borrower possesses the authority solely to deal with the liquidation estate of the Principal Borrower and is not authorised to deal with any assets owned by other parties. The Corporate Debtor is a separate entity and the CIRP of the Corporate Debtor is different from the liquidation process of the Principal Borrower. Merely because the Principal Borrower has undergone a liquidation process in separate proceedings, and for that matter, the security interest created by the Principal Borrower has been relinquished by the Applicant, has no impact on the third-party securities. There is no contention by the Respondent that the charge/mortgage created by the Corporate Debtor has been relinquished or satisfied through any positive action on the part of the Applicant. Consequently, the assertion that the relinquishment of the security in the liquidation process of the Principal Borrower results in the release of the security interest created by the Corporate Debtor is untenable.
- 6.16. Lastly, the Respondent contends that the Applicant slept over its rights, during which time the Committee of Creditors approved a Resolution Plan in its meeting held on 09.01.2025. Furthermore, the Respondent has sought the approval of the Tribunal on the Plan through an application filed on 14.01.2025. In contrast, the present Application was filed only on 21.01.2025, which is eight days after the filing of the application for approval of the Resolution Plan.
- 6.17. It is a matter of record that the Applicant filed its claim on 30.05.2024, asserting its rights as a secured creditor of the Corporate Debtor. The Applicant has consistently engaged with the IRP and the RP to seek admission of the claim through multiple emails. However, the claim was ultimately rejected *vide* email dated 18.12.2024 and 13.01.2025. Consequently, the Applicant has filed the present Application on 13.02.2025, challenging the rejection. In the circumstances, the contention that the Applicant slept over its rights is not substantiated. Moreover, it has been observed that the Respondent, despite being fully aware of the pending verification of the Applicant's claim, proceeded with the Resolution Plan without adequately considering the ramifications of the claim still under verification. It is a settled position of law that the secured creditor

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cannot be totally disregarded when their rights under Sections 53 and 52 of the Code are recognised. Additionally, reliance on *Ghanshyam Mishra* judgment is premature, given that the Resolution Plan has not yet received approval from this Tribunal.

- 6.18. For all the reasons recorded above, the rejection of Applicant's claim in the category of 'other creditors' cannot be sustained. The Respondent, has, without proper application of mind, rejected the claim of the Applicant as a Secured Creditor. Therefore, the Respondent is directed to consider the Applicant's claim, in accordance with the law, while taking into account the observations set forth in this Order. The Applicant shall be entitled to all rights and obligations as applicable to a 'secured creditor'.
- 6.19. Accordingly, **IA No. 940/2025** is **allowed** in the aforesaid terms. No order as to costs.

Sd/-

**ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

Siddhi, LRA

Sd/-

**K. R. SAJI KUMAR
MEMBER (JUDICIAL)**