

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1019 OF 2024

(Arising against the impugned order dated 22.04.2024 passed by the National Company Law Tribunal, Ahmedabad Division Bench in Misc. A/1 (AHM) 2024 in C.P. No. (IB) 203/2020)

IN THE MATTER OF:

STCI Finance Limited

...Appellant

Versus

IMP Powers Limited (Through its Liquidator)

...Respondent No.1

Mr. Ravindra Kumar Goyal (Liquidator)

...Respondent No.2

FM India Supply Chain Private Limited (Proforma Respondent)

...Respondent No.3

Rakesh Ramanlal Shah (Successful Auction Purchaser)

...Respondent No.4

State Bank of India (FC)

...Respondent No.5

Karnataka Bank (FC)

...Respondent No.6

IDBI Bank (FC)

...Respondent No.7

Axis Bank Ltd. (FC)

...Respondent No.8

Bank of India (FC)

...Respondent No.9

Indian Bank (FC)

...Respondent No.10

Present:

For Appellant:

Mr. Arun Kathpalia, Sr. Advocate, Ms. Surekha Raman, Mr. Sidharth Nair, Ms. Diksha, Advocates.

For Respondents:

Mr. Krishnendu Datta, Sr. Advocate, Mr. Samaksh Goyal, Ms. Alina Merin Mathew, Advocates for Liquidator.

Mr. Malak Bhatt, Ms. Neeha Nagpal, Ms. Somya Saxena, Advocates for Successful Bidder.

Cont'd..../

Mr. Abhijeet Sinha, Sr. Advocate, Ms. Malvika, Mr. Harshit Khare, Mr. Prafful Saini, Mr. Ayuj Agrawal, Mr. Bijesh Gupta, Advocates for SBI & other bank.

With
Company Appeal (AT) (Ins.) No. 1657 of 2024

(Arising against the impugned order dated 20.08.2024 passed by the National Company Law Tribunal, Ahmedabad Division Bench in IA/965(AHM) in Misc. A/1 (AHM) 2024 in C.P. No. (IB) 203/2020)

IN THE MATTER OF:

STCI Finance Ltd.

...Appellant

Versus

IMP Powers Limited (Through its Liquidator)

...Respondent No.1

Mr. Ravindra Kumar Goyal (Liquidator)

...Respondent No.2

FM India Supply Chain Private Limited

...Respondent No.3

(Proforma Respondent)

Rakesh Ramanlal Shah (Successful Auction Purchaser)

...Respondent No.4

State Bank of India (FC)

...Respondent No.5

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...Respondent No.6

IDBI Bank (FC)

...Respondent No.7

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...Respondent No.8

Bank of India (FC)

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Indian Bank (FC)

...Respondent No.10

Present:

For Appellant : Mr. Arun Kathpalia, Sr. Advocate, Ms. Surekha Raman, Mr. Sidharth Nair, Ms. Diksha, Advocates.

For Respondents : Mr. Krishnendu Datta, Sr. Advocate, Mr. Samaksh Goyal, Ms. Alina Merin Mathew, Advocates for Liquidator.

Mr. Malak Bhatt, Ms. Neeha Nagpal, Ms. Somya Saxena, Advocates for Successful Bidder.

Mr. Abhijeet Sinha, Sr. Advocate, Ms. Malvika, Mr. Harshit Khare, Mr. Prafful Saini, Mr. Ayuj Agrawal, Mr. Bijesh Gupta, Advocates for SBI & other bank.

With
Company Appeal (AT) (Ins.) No. 893 of 2025

(Arising against the impugned order dated 05.11.2024 passed by the National Company Law Tribunal, Ahmedabad Bench in IA/1387 (AHM) 2024 in C.P. No. (IB) 203/2020)

IN THE MATTER OF:

STCI Finance Limited (NBFC and FC of CD) ...Appellant

Versus

Shri Rakesh Ramanlal Shah (Successful Auction Purchaser) ...Respondent No.1

Mr. Ravindra Kumar Goyal (Liquidator of IMP Powers Limited) ...Respondent No.2

State Bank of India (FC) ...Respondent No.3

Karnataka Bank (FC) ...Respondent No.4

IDBI Bank (FC) ...Respondent No.5

Axis Bank Ltd. (FC) ...Respondent No.6

Bank of India (FC) ...Respondent No.7

Indian Bank (FC) ...Respondent No.8

FM India Supply Chain Private Limited (Proforma Respondent) ...Respondent No.9

Present:

For Appellant : Mr. Arun Kathpalia, Sr. Advocate, Ms. Surekha Raman, Mr. Sidharth Nair, Ms. Diksha, Advocates.

For Respondents : **Mr. Krishnendu Datta, Sr. Advocate, Mr. Samaksh Goyal, Ms. Alina Merin Mathew, Advocates for Liquidator.**
Mr. Malak Bhatt, Ms. Neeha Nagpal, Ms. Somya Saxena, Advocates for Successful Bidder.
Mr. Abhijeet Sinha, Sr. Advocate, Ms. Malvika, Mr. Harshit Khare, Mr. Prafful Saini, Mr. Ayuj Agrawal, Mr. Bijesh Gupta, Advocates for SBI & other bank.

J U D G M E N T

(27th April, 2026)

INDEVAR PANDEY, MEMBER (T)

These three appeals viz. Company Appeal (AT) (Ins.) No. 1019 of 2024; Company Appeal (AT) (Ins.) No. 1657 of 2024; and Company Appeal (AT) (Ins.) No. 893 of 2025 arise from the same insolvency and liquidation proceedings of the **Corporate Debtor, IMP Powers Limited**, and these involve common questions of fact and law relating to the rights of the **Appellant, STCI Finance Limited**, who is one of the Financial Creditors of the Corporate Debtor(CD) and is a Non-Banking Finance Company registered with the Reserve Bank of India. All these Appeals were heard together and are being decided by this common judgment to avoid repetition of facts and to ensure consistency in adjudication.

COMPANY APPEAL (AT) (INS.) NO. 1019 OF 2024

2. The Company Appeal (AT) (Ins.) No. 1019 of 2024 has been preferred by the Appellant, STCI Finance Limited, under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**Code**'), assailing the **impugned order dated 22.04.2024 passed by the National Company Law**

Tribunal, Ahmedabad, Division Bench (Adjudicating Authority) in Misc. A/1 (AHM) 2024 in C.P. No. (IB) 203/2020, whereby the Adjudicating Authority dismissed the application filed by the Appellant under Sections 60(5) and 52(5) of the Code seeking, inter alia, setting aside of the E-auction Sale Notice dated 08.03.2024 issued by **Respondent No.2, Mr. Ravindra Kumar Goyal - Liquidator of IMP Powers Limited, (Corporate Debtor- Respondent No. 1** herein) for sale of the Corporate Debtor(CD), as a going concern, and further seeking a direction to permit the Appellant to realise its secured assets independently under Section 52(3) of the Code. The other Respondents in this appeal are FM India Supply Chain Private Limited/**Respondent no. 3** which is a Proforma Respondent. The **Successful Auction Purchaser Rakesh Ramanlal Shah** is arrayed as **Respondent No. 4**. Six Banks which are financial creditors are arrayed in the following manner: **State Bank of India as Respondent No.5; Karnataka Bank as Respondent No.6; IDBI Bank as Respondent No.7; Axis Bank Ltd as Respondent No.8; Bank of India as Respondent No.9; and Indian Bank as Respondent No.10**. This appeal would henceforth be referred as **First Appeal**.

3. Ld. Adjudicating Authority issued the following directions in Misc. A/1(AHM)2024, vide the impugned order dated 22.04.2024 in para 18-22 of the same:

“18. We accordingly, order issue no. (I) and (II) in negative and we are of the view that the Liquidator should continue to sale the company as a going concern in order to comply with the liquidation order dated 19.07.2023 passed in IA No. 987 of 2023.

19. we are conscious that the Financial creditor has certain rights available to them under the Code so as to the manner of sale, accordingly, we direct the Financial Creditor to participate in all the SCC meetings, more particularly, regarding fixing the Reserve Price and the manner of sale of the corporate Debtor as a going concern in the SCC meetings.

20. we also direct the Liquidator not to issue the sale certificate or to distribute the proceeds of realized by way of sale as a going concern. The Liquidator is hereby directed to place the entire records before this Tribunal and after hearing the Applicant herein and the Liquidator, this Tribunal will further decide on the issue of the sale certificate and the distribution of the proceeds realized.

21. As regards prayer (c), no ground has been made by the Applicant seeking the deferment of cost payable to the Liquidator. Prayer (c) is hereby denied. Applicant to comply with the same in 15 days if not already complied.

22. With the above directions, the present Mis. A/ 1(AHM\2024 in CP (IB) 203 of 2020 is hereby disposed off.”

4. The Appellant, being aggrieved by the failure of the Adjudicating Authority to consider its categorical assertion of non-relinquishment of security interest, has preferred the present Appeal wherein the following reliefs have been sought in para 21 of the appeal:

“21. RELIEFS SOUGHT

- a) An order allowing the present Appeal and thereby setting aside the Impugned Order of the Adjudicating Authority dated 22.04.2024 in Misc. A/ 1 (AHM) 2024 in C.P. No. (IB) 203/2020;
- b) Pending the hearing and final disposal of the Appeal this Hon'ble Court stays the auction and sale of the Corporate Debtor.

- c) *Pending the hearing and final disposal of the Appeal the Liquidator be directed to maintain status quo qua the Secured Assets.*
- d) *An order awarding to the Appellant and against the Respondent, costs of and relating to the present Appeal; and*
- e) *Such other and/or further order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the present case.”*

COMPANY APPEAL (AT) (INS.) NO. 1657 OF 2024

5. The Company Appeal (AT) (Ins.) No. 1657 of 2024 has been preferred by the Appellant, STCI Finance Limited, under Section 61 of the Insolvency and Bankruptcy Code, 2016, assailing the order dated 20.08.2024 passed by the National Company Law Tribunal, Ahmedabad Division Bench in IA/965(AHM) in Misc. A/1 (AHM) 2024 in C.P. No. (IB) 203/2020, whereby the Adjudicating Authority directed issuance of the Sale Certificate in respect of the Corporate Debtor, IMP Powers Limited, within a period of three days and permitted filing of objections by other lenders with regard to distribution of sale proceeds, despite the Appellant having asserted its rights as a secured creditor under Section 52 of the Code and despite pendency of proceedings before this Appellate Tribunal. The array of respondents in this appeal also is exactly the same as in first appeal. For the sake of convenience this appeal is referred to as **Second Appeal**.

6. Ld. Adjudicating Authority on 20.08.2024 passed the following order in IA/965(AHM) in Misc. A/1(AHM)2024:

In view of above, we hereby direct the Liquidator to issue a sale certificate, in favour of the Successful Bidder within three days from the date of this order.

Learned Counsel, Mr. Harshit Khare appears for the SBI Bank, Karnataka Bank, IDBI Bank, Axis Bank & Bank of India and seeks indulgence in this matter to file affidavit of objection and make submission on the issue of the distribution.

Let the same be filed within a period of seven days with liberty to other sides to file counter affidavit to the same, if any, before the next date of hearing.

Registry is directed to permit these Financial Creditors to file their objection/ affidavit and place before us.

Meanwhile, we direct the liquidator to keep the amount realized through the auction sale meant for distribution to the financial creditors in interest bearing fixed deposit, if not already kept immediately. Re-list for further consideration on 06.09.2024.

7. the Appellant, being aggrieved by the aforesaid order which, according to it, prejudicially affects its rights over the secured assets, has preferred the present Appeal and sought the following Relief:

“21. RELIEFS SOUGHT

- a) *An order allowing the present Appeal and thereby direct stay of the issuance of sale certificate as passed vide order dated 06.08.2024 till the Recall Application is decided setting in Misc. A/ 1 (AHM) 2024 in C.P. No. (IB) 203/2020;*
- b) *Alternatively, in the event sale certificate has been issued, pending the hearing and final disposal of the Appeal this Hon'ble Court stays the effect of sale certificate of the Corporate Debtor.*
- c) *An order awarding to the Appellant and against the Respondent, costs of and relating to the present Appeal; and*
- d) *Such other and/or further order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the present case.”*

COMPANY APPEAL (AT) (INS.) NO. 893 OF 2025

8. The Appeal (AT) (Ins.) No. 893 of 2025 has been preferred by the Appellant, STCI Finance Limited, under Section 61 of the Insolvency and Bankruptcy Code, 2016, assailing the impugned order dated 05.11.2024 passed by the National Company Law Tribunal, Ahmedabad Bench in IA/1387 (AHM) 2024 in C.P. No. (IB) 203/2020, whereby an application filed by Respondent No.1, **Shri Rakesh Ramanlal Shah** (successful auction purchaser of the Corporate Debtor), came to be allowed granting various reliefs, concessions, waivers and immunity under Section 32A of the Code along with permissions for operation and revival of the Corporate Debtor as a going concern, and such order was passed in conjunction with Respondent No.2, **Mr. Ravindra Kumar Goyal** (Liquidator), without impleading or issuing notice to the Appellant and other financial creditors and in disregard of prior orders passed by this Appellate Tribunal making the issuance of sale certificate subject to the outcome of pending proceedings. In this appeal the respondents are the same as in previous appeals except for the corporate Debtor who is not impleaded. For the sake of convenience this appeal is referred to as **Third Appeal**.

9. The Appellant, being aggrieved by the said order passed in violation of principles of natural justice and affecting its rights as a secured creditor, has preferred the present Appeal and has sought the following Relief:

“RELIEFS SOUGHT

- a) *An order allowing the present Appeal and thereby setting aside the impugned order dated 05.11.2024 passed by National Company*

Law Tribunal, Ahmedabad Division Bench, IA/1387 (AHM)2024 in C.P. No. (IB) 203/2020:

- b) Direct ex-parte ad interim stay of the order dated 05.11.2024 passed by National Company Law Tribunal, Ahmedabad Division Bench, IA/1387 (AHM)2024 in C.P. No. (IB) 203/2020;*
- c) Confirm prayer clause (b) after notice to the Respondents pending the hearing and final disposal of the present Appeal.*
- d) pass an order awarding to the Appellant and against the Respondent, costs of and relating to the present Appeal; and*
- e) Such other and/or further order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the present case.*

Brief facts of the case

10. The brief facts of the case relevant for deciding these appeals are as given below:

- i. The Appellant, being a Non-Banking Financial Company registered under the Companies Act, 1956, had extended financial assistance to the Corporate Debtor, namely IMP Powers Limited, by sanctioning a term loan aggregating to Rs. 25 crores, disbursed in tranches during November 2017 and August 2018, for purposes including augmentation of long-term working capital and capital expenditure requirements.
- ii. In order to secure the said loan facility, comprehensive security documents including loan agreements and mortgage deeds were executed on 29.11.2017, followed by a supplementary mortgage dated 04.08.2018, whereby a first pari passu charge was created in favour of

the Appellant alongside SBI/Respondent No.5. The Appellant's exposure was substantially higher at approximately Rs. 40 crores as against Rs. 9 crores of Respondent No.5.

- iii. A default occurred in repayment obligations with effect from 29.02.2020, leading the Appellant to issue an Event of Default notice on 09.02.2021, followed by a Recall Notice dated 21.05.2021 invoking guarantees and demanding repayment of the entire outstanding dues within stipulated timelines.
- iv. Insolvency proceedings were triggered when the Appellant filed a petition under Section 7 of the Code and the Adjudicating Authority, admitted the Corporate Debtor into Corporate Insolvency Resolution Process on 29.03.2022, appointing an Interim Resolution Professional and constituting the Committee of Creditors.
- v. The Corporate Debtor having failed to achieve resolution, the Adjudicating Authority ordered liquidation on 19.12.2023 and appointed Respondent No.2 as the Liquidator, who thereafter issued a public announcement on 21.12.2023 inviting claims from stakeholders.
- vi. The Appellant submitted its claim on 17.01.2024 for an amount of Rs. 39,55,34,828/- and explicitly asserted its right as a secured creditor without relinquishing its security interest under Section 52 of the Code, thereby seeking to realise its secured assets independently.

vii. Although the Liquidator admitted the claim of the Appellant on 17.02.2024, he unilaterally assumed relinquishment of the Appellant's security interest without consent, prompting the Appellant to object and reiterate its intention to enforce security rights independently, including by email dated 21.02.2024 and subsequent communications.

viii. Despite such assertion by the Appellant, the Liquidator proceeded to issue an e-auction sale notice dated 08.03.2024 for sale of the Corporate Debtor as a going concern, disregarding the Appellant's rights, compelling the Appellant to approach the Adjudicating Authority challenging the same.

ix. The Adjudicating Authority, while dismissing the Appellant's application vide order dated 22.04.2024, nevertheless directed that no sale certificate be issued nor sale proceeds be distributed without further hearing, thereby preserving the rights of the Appellant pending adjudication. Aggrieved thereby, the Appellant filed Company Appeal (AT) (Ins.) No. 1019 of 2024 (First Appeal) before this Appellate Tribunal, wherein notice was issued on 21.05.2024 and it was recorded that although the sale had taken place, issuance of sale certificate and distribution of proceeds stood restrained.

x. During pendency of the appeal, the Liquidator moved an application on 22.06.2024 seeking permission to issue the sale certificate and distribute proceeds, which was entertained by the Adjudicating

Authority on 26.06.2024, prompting further challenge by the Appellant before this Tribunal.

- xi. An affidavit was filed by the Liquidator on 03.08.2024 in this Appellate Tribunal proposing distribution of sale proceeds, including payment of approximately Rs.39.30 crores to the Appellant out of total sale consideration of Rs.78 crores. The statement of Liquidator was recorded by this Tribunal on 06.08.2024, leading to disposal of the appeal without adjudication on merits.
- xii. Subsequently, the Adjudicating Authority passed an order on 20.08.2024 directing issuance of sale certificate within three days, which was immediately challenged by the Appellant through a recall application and by filing a fresh appeal before this Tribunal.
- xiii. This Appellate Tribunal, while entertaining the second appeal on 23.08.2024, specifically directed that issuance of the sale certificate shall remain subject to the outcome of the appeal. The Appellant also sought revival of the earlier appeal by filing IA No. 6616 of 2024, while parallel proceedings continued before the Adjudicating Authority regarding issuance of sale certificate and distribution of proceeds. This Appellate Tribunal allowed the revival of First appeal on 19.02.2025.
- xiv. The Adjudicating Authority, being aware of the pendency of appeals, adjourned proceedings on 23.09.2024 expressly observing that judicial propriety required awaiting the outcome of proceedings before the Appellate Tribunal.

- xv. Successful Auction Purchaser/ Respondent No.4 filed IA/1387 (AHM) 2024 before Adjudicating Authority seeking extensive reliefs including immunity under Section 32A and permissions for revival, without impleading or notifying the Appellant or other financial creditors. The said application was prosecuted solely with the participation of the Liquidator, who expressed no objection to grant of reliefs, even without obtaining consent of stakeholders, thereby materially affecting their rights.
- xvi. The Adjudicating Authority, thereafter, proceeded to hear and allowed the said application vide impugned order dated 05.11.2024, without issuing notice to the Appellant or considering binding directions of this Tribunal, thereby granting wide-ranging reliefs and creating a fait accompli situation.
- xvii. The Appellant claims he remained completely unaware of the said proceedings and order, as neither the filing of the application nor the passing of the order was disclosed, and only upon receipt of email dated 04.05.2025 from the Liquidator enclosing a quarterly report did the Appellant first come to know about the impugned order. The Appellant thereafter filed the Third appeal CA (AT)(INS) No. 893 of 2025 challenging the aforesaid impugned order. The appeal has been filed with a delay of 171 days.
- xviii. Appellant also came to know that out of the total sale proceeds amounting to Rs. 78 crores, a portion had already been appropriated

and distributed in part, including payments towards liquidation costs, fees, statutory dues, and the balance has been kept in fixed deposit.

xix. The Appellant contends that the impugned order has been obtained in a clandestine manner, in violation of principles of natural justice, in disregard of binding judicial orders, and in collusion between the SRA and the Liquidator, thereby necessitating the filing of the Third Appeal before this Tribunal.

Submissions of the Appellant/STCI

11. Shri Katpalia Ld. Sr. Counsel appearing on behalf of the Appellant at the outset submitted that the present Appeal has been preferred assailing the Impugned Order dated 22.04.2024 passed by the Learned Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench, whereby the application filed by the Appellant being Misc. A/1 (AHM) 2024 in C.P. (IB) No. 203/2020 came to be dismissed. The said application had been filed specifically seeking enforcement of the Appellant's security interest in terms of Section 52 of the Insolvency and Bankruptcy Code, 2016 along with other applicable provisions of the IBBI (Liquidation Process) Regulations, 2016. It is submitted that the Impugned Order has resulted in a complete denial of the statutory rights vested in the Appellant as a secured creditor.

12. He submitted that the findings recorded in the Impugned Order are wholly unsustainable both in law as well as on facts. The Learned Sr. Counsel submits that the Impugned Order is ex-facie arbitrary, perverse, and contrary to settled legal principles. It is specifically contended that the

Impugned Order has been passed in clear violation of Section 52 of the IBC, which unequivocally grants a secured creditor the right to either relinquish its security interest or realise the same independently. Further, the findings are also in violation of Regulation 32 of the Liquidation Regulations, which prohibits sale of secured assets without relinquishment of security interest. It is also submitted that the Learned Adjudicating Authority has completely misconstrued Regulation 21A as well as Regulation 37 of the Liquidation Regulations and has erroneously applied the same in a manner that defeats the statutory rights of the Appellant.

13. The Learned Sr. Counsel submits that it is an admitted position on record that the Appellant and State Bank of India are the only secured creditors holding first pari passu charge over the secured assets of the Corporate Debtor. It is further submitted that the outstanding dues of the Appellant are approximately Rs.40 crores, whereas the dues of SBI are approximately Rs.4 crores, thereby clearly demonstrating that the Appellant holds an overwhelming majority of the secured exposure, i.e., nearly 90% of the secured debt. Despite this undisputed position, the Appellant's statutory rights have been completely disregarded.

14. It is submitted that the factual matrix, as borne out from the record, clearly establishes that the Corporate Debtor had availed a term loan of Rs.25 crores under a loan agreement dated 29.11.2017, and thereafter, by way of a supplementary mortgage deed dated 04.08.2018, a first pari passu charge was extended in favour of the Appellant along with SBI. Subsequently, the Corporate Debtor was admitted into CIRP on 29.03.2022,

and eventually, liquidation was ordered on 19.12.2023. The Appellant duly filed its claim on 17.01.2024 for an amount of Rs.39,55,34,828/-. It is further submitted that the Liquidator verified the claim and security interest of the Appellant and also acknowledged that the Appellant had elected not to relinquish its security interest under Section 52 of the Code. However, in a completely illegal and arbitrary manner, the Liquidator proceeded to assume relinquishment of the Appellant's security interest without its consent.

15. Ld. Sr Counsel submitted that the Appellant immediately objected to such illegal assumption on 21.02.2024 and reiterated that it had not relinquished its security interest. Despite this, the Liquidator continued to act in violation of law by calling upon the Appellant to comply with Regulation 21A without even disclosing the costs or enabling enforcement of the security. It is also submitted that the Appellant was excluded from the Stakeholders' Consultation Committee and was not made part of deliberations, including the meeting dated 01.03.2024.

16. It is further submitted that despite repeated communications by the Appellant, including letter dated 07.03.2024 asserting its statutory rights, the Liquidator proceeded, with mala fide intent, to issue an e-auction notice dated 08.03.2024 for sale of the Corporate Debtor as a going concern under Regulation 32(e), in clear violation of the Appellant's rights. The Appellant was therefore constrained to approach the Learned Adjudicating Authority on 18.03.2024 seeking appropriate reliefs.

17. The Learned Sr. Counsel submits that despite the above undisputed facts demonstrating blatant illegality on the part of the Liquidator, the Learned Adjudicating Authority has erroneously dismissed the Appellant's application and recorded findings which are contrary to law. It has been wrongly held that the Appellant had not taken steps under SARFAESI, that relinquishment is deemed under Section 13(9), that majority decision binds even first charge holders, and that Regulation 21A results in automatic inclusion in liquidation estate. It is submitted that these findings are wholly unsustainable and based on a complete misreading of the statutory framework. He submitted that the Impugned Order is liable to be set aside being contrary to both law and facts.

18. The Learned Sr. Counsel submits that the Appellant had, within the prescribed timelines, duly intimated the Liquidator of its intention to realise its security interest independently. However, despite such intimation, the Liquidator failed to comply with its statutory obligations under Section 52(3) and (4) of the Code by not permitting the Appellant to enforce its security. It is submitted that unless the Liquidator verifies the security interest and facilitates enforcement, the secured creditor cannot proceed. Thus, the failure of the Liquidator itself prevented the Appellant from taking further steps. It is further submitted that judgments relied upon by the Respondents, including *Phoenix ARC Pvt. Ltd. v. Kuldeep Verma*, are distinguishable as in those cases possession was handed over, unlike the present case.

19. It is further submitted that reliance on Section 13(9) of the SARFAESI Act is wholly misplaced. Even assuming applicability, the Appellant and SBI together constitute the first charge holders, and with the Appellant holding nearly 90% of the secured exposure, it clearly satisfies any majority requirement. Therefore, the finding that relinquishment is deemed is legally untenable.

20. Ld. Sr. Counsel submitted that Section 13(9) is in any event subject to the provisions of the IBC, which is a complete code. Under the IBC framework, sale of the Corporate Debtor as a going concern is impermissible, where a secured creditor has not relinquished its security interest. In the present case, the Appellant has never relinquished its security; hence, the very basis of sale as a going concern is illegal.

21. It is submitted that even during CIRP, the Appellant had consistently opposed any proposal for sale of the Corporate Debtor as a going concern, including in the 12th CoC meeting. This clearly establishes the consistent stand of the Appellant that it has never relinquished its rights.

22. It is further submitted that the Impugned Order completely ignores the settled principle of priority of charges. A first charge holder has precedence over subordinate charge holders. However, by equating the Appellant with second charge holders and making it subject to majority decision, the Adjudicating Authority has effectively nullified the concept of secured priority, contrary to the law laid down in *ICICI Bank v. SIDCO Leather Ltd. (2006) 10 SCC 452*.

23. He submits that the finding that the Appellant could not have sold the asset is factually incorrect, as the timeline under SARFAESI extended till June 2024. Thus, the conclusion that enforcement was not possible is based on incorrect assumptions.

24. It is also submitted that with respect to the scheme of compromise and arrangement, the Appellant had consistently opposed the same and had expressly reserved its right to initiate legal proceedings if its secured assets were included. Thus, the finding that no objection was raised is incorrect.

25. The Learned Sr. Counsel submits that since the Appellant has not relinquished its security interest, it is not a member of the Stakeholders' Consultation Committee under Regulation 31A, and therefore, the reasoning of deadlock or majority decision is wholly irrelevant and misconceived.

26. He submitted that Regulation 21A cannot be interpreted in a manner that curtails or overrides the substantive rights granted under Section 52 of the Code. The right of a secured creditor to realise its security is a statutory right and cannot be defeated by procedural regulations. He submits that Regulation 21A must be interpreted harmoniously with Section 52 and not in derogation thereof. Any interpretation that results in extinguishment of rights would be contrary to legislative intent.

27. It is further submitted by Ld. Sr. Counsel that the proviso to Regulation 21A(2)(b) merely deals with a situation where assets are not sold

within 180 days, and does not empower the Liquidator to treat security interest as relinquished or to usurp the rights of a secured creditor. He submits that regulations cannot override the parent statute. The IBC does not prescribe any such forfeiture of rights after 180 days. Further, there is no requirement under the Code for payment of liquidation costs prior to enforcement, except CIRP costs.

28. He submitted without prejudice, that even if the 180-day period is considered, the same can commence only after the Liquidator permits enforcement under Section 52(4). In the present case, no such permission was granted; hence, the period cannot be invoked against the Appellant.

29. It is further submitted that the Appellant had clearly communicated on 21.02.2024 that Regulation 21A was being misapplied, and that further steps were contingent upon verification and handing over of possession, which never occurred. It is also submitted that although part CIRP costs were paid, liquidation costs were communicated only after issuance of the e-auction notice, which itself was under challenge.

30. The Learned Sr. Counsel submits that the proviso to Regulation 32 clearly stipulates that assets subject to security interest cannot be sold unless such security interest is relinquished. Since the Appellant has not relinquished its security, the inclusion of such assets in the e-auction notice is per se illegal.

31. It is further submitted that the Liquidator has no authority to compel or deem relinquishment. In this regard, reliance is placed on **“Canara**

Bank v. Rajendran (2024 SCC OnLine NCLAT 390),” wherein it has been held that a secured creditor cannot be forced to relinquish its security interest. The action of the Liquidator in deeming relinquishment is therefore wholly without jurisdiction.

32. Ld. Sr. Counsel submits that Regulation 37 is not applicable in the present case, as the precondition for its applicability—namely, verification of security and handing over of possession—has not been fulfilled by the Liquidator. In absence of compliance with Section 52(4), Regulation 37 cannot be invoked.

33. Summing up his arguments, Learned Sr. Counsel for the Appellant submitted that the Impugned Order dated 22.04.2024 passed by the Learned Adjudicating Authority deserves to be set aside, and the Appellant, having not relinquished its security interest, be permitted to realise its secured assets independently in accordance with Section 52(1)(b) of the Insolvency and Bankruptcy Code, 2016.

Submissions of the Respondent No. 2/ Liquidator

34. Shri Krishnendu Datta Ld. Sr. Counsel for the Respondent No. 2/ Liquidator submits that the Appellant has failed to comply with the statutory framework governing realization of security interest under Section 52 of the Insolvency and Bankruptcy Code, 2016 read with Regulations 21, 21A and 37 of the IBBI (Liquidation Process) Regulations. It is submitted that the statutory scheme mandates that a secured creditor, if it elects to realize its security interest outside liquidation, must undertake specific

steps within a period of 90 days from the liquidation commencement date. However, in the present case, the Appellant has admittedly failed to undertake such steps within the prescribed timeline.

35. It is submitted that the law, as clarified by this Hon'ble Tribunal in *Phoenix ARC Pvt. Ltd. v. Kuldeep Verma*, requires a secured creditor to, inter alia, intimate the Liquidator of the proposed realization price of the secured asset and enable the Liquidator to ascertain whether a higher bidder exists. Simultaneously, the secured creditor is required to clearly communicate its decision regarding relinquishment or realization of its security interest in the prescribed form and, in case of realization, deposit the requisite CIRP and liquidation costs within 90 days.

36. Ld. Sr. Counsel submits that in the present case, although the Appellant filed its claim in Form D and indicated that it had not relinquished its security interest, it failed to undertake any of the substantive steps required for actual realization. Mere assertion of intention, without compliance with statutory requirements, cannot be treated as valid exercise of rights under Section 52.

37. He submitted that the Liquidator had, on multiple occasions, informed the Appellant of the CIRP and liquidation costs payable. These details were placed before the Appellant during the 14th CoC Meeting and again in the 2nd SCC Meeting, the minutes of which were duly circulated to the Appellant on 02.03.2024. Despite having full knowledge of the costs, the Appellant failed to deposit the same within the statutory period.

38. Ld. Sr. Counsel further submits that the Liquidator, vide email dated 21.02.2024, specifically sought clarification from the Appellant regarding the steps taken for realization of the security interest. However, the Appellant failed to respond in terms of Regulation 21(2)(a), thereby demonstrating complete inaction.

39. It is submitted that the legal consequence of such failure is clearly provided under Regulation 21(3), which stipulates that if the secured creditor does not comply with the requirements within 90 days, the secured asset shall automatically form part of the liquidation estate. This position has also been affirmed by this Hon'ble Tribunal in *HDFC Bank Limited vs. Hema Engineering Industries Limited*, wherein it has been held that non-payment of CIRP and liquidation costs within the stipulated period results in automatic vesting of the asset in the liquidation estate.

40. Therefore, it is submitted that the Appellant's security interest stood extinguished by operation of law, and the asset validly became part of the liquidation estate. Consequently, the Appellant cannot now contend that it continues to hold an independent right to realize the secured asset.

41. Ld. Sr. Counsel for the Respondent submits that the sale notices issued by the Liquidator are fully compliant with the provisions of the Code and the applicable regulations, and were issued pursuant to decisions taken in the Stakeholders' Consultation Committee (SCC) meetings.

42. It is submitted that the first sale notice dated 08.03.2024 was issued following the 3rd SCC Meeting, wherein a conscious decision was taken to

sell the Corporate Debtor as a going concern at a reserve price of Rs. 94 crores. However, since no bids were received, the Liquidator, in consultation with the SCC, issued a second sale notice dated 24.04.2024 at a reduced reserve price. The minutes of these meetings were duly circulated to the Appellant, thereby ensuring transparency and participation.

43. Ld. Sr. Counsel submits that the successful auction purchaser (Respondent No. 3) emerged pursuant to the second sale notice, which was issued well beyond the expiry of the 90-day period available to the Appellant for realization of its security interest. The auction was conducted on 21.05.2024 and duly reported in the 6th SCC Meeting. Subsequently, the sale certificate was issued in terms of the NCLT's order dated 20.08.2024.

44. He further submitted that the Appellant, along with other secured creditors including SBI, did not raise any objection to either the sale process or the sale consideration of Rs. 78 crores before the Adjudicating Authority. In fact, the NCLT order records that there was no objection to the sale. Therefore, the Appellant is estopped from challenging the sale at this stage.

45. In the light of the above, Ld. Sr. Counsel submitted that the sale process was conducted strictly in accordance with law, and the Appellant cannot now seek to invalidate the same on untenable grounds.

46. Regarding the Appellant's contention regarding lack of opportunity to consider a scheme of compromise or arrangement Ld. Sr. Counsel submits that is wholly misconceived and contrary to the record. He submitted that during the 1st SCC Meeting held on 29.12.2023, the Liquidator had

specifically taken up the agenda of inviting expressions of interest for a scheme of compromise or arrangement. The Appellant was present in this meeting and had full knowledge of the said process.

47. Despite being aware of the opportunity, the Appellant neither raised any objection nor took any steps to propose or support any scheme. Furthermore, in subsequent SCC meetings, including the 3rd SCC Meeting, where such a scheme was discussed and ultimately rejected, the Appellant chose to remain absent despite due notice. He submits that in these circumstances, the Appellant cannot now be permitted to raise a belated challenge on this ground, having consciously chosen not to participate in the process.

48. Regarding the distribution mechanism proposed by the Liquidator in the affidavit dated 03.08.2024, Shri Dutta Ld. Sr. Counsel submits that the distribution mechanism is based on a careful consideration of the factual matrix and applicable legal principles.

49. He submitted that although the principle of pari passu distribution has been debated in various judgments, including *TDB vs. Anil Goel*, the said judgment is presently stayed by the Hon'ble Supreme Court. Therefore, reliance was placed on the judgment of the Hon'ble Supreme Court in *ICICI Bank Limited vs. SIDCO Leather Ltd.*, which clarifies that the inter se priority of charges among secured creditors is not extinguished even in a liquidation scenario.

50. It is submitted that the Liquidator, while proposing the distribution, took into account the loan documents, the nature of security interests, and the existence of pari passu charges between STCI and SBI, as well as letters issued by other lenders ceding charge in favour of STCI.

51. Ld. Sr. Counsel further submitted that the Liquidator has acted in a fair and transparent manner and has not sought to impose the proposed distribution as final. In fact, in its reply to IA 6616/2024, the Liquidator has expressly stated that it has no objection if this Hon'ble Tribunal modifies the proposed distribution, and has left the issue entirely to the wisdom of this Hon'ble Tribunal.

52. He submitted that the Liquidator has discharged its duties in accordance with law, and the question of final distribution remains open for adjudication by this Hon'ble Tribunal.

53. Shri Dutta Ld. Sr. Counsel for the Liquidator submits that the third appeal is barred by limitation and is therefore not maintainable. It is further submitted that, in any event, the Appellant did not press this appeal during the course of arguments and confined its submissions to the first and second appeals. Accordingly, the third appeal does not merit consideration.

54. Summing up his arguments Shri Dutta submitted that the appeals filed by the Appellant are devoid of merit, both on facts and in law. The Appellant has failed to comply with the statutory requirements for realization of its security interest, has acquiesced in the sale process, and is now seeking to challenge actions that are fully compliant with the

Insolvency and Bankruptcy Code and the applicable regulations. The present appeals therefore deserve to be dismissed.

Submissions of Respondent Nos. 5–10/ State Bank of India and other Banks

55. Shri Abhijeet Sinha Ld. Sr. Counsel appearing on behalf of SBI and other Banks submitted at the outset that it is an admitted and undisputed factual position on record that the Answering Respondents, namely State Bank of India, Karnataka Bank, IDBI Bank, Axis Bank, Bank of India and Indian Bank, were prior-in-time secured creditors of the Corporate Debtor, much prior to the entry of STCI Finance Limited into the lending structure. The State Bank of India, as a term loan lender, held a first charge over the fixed assets and a second charge over the current assets of the Corporate Debtor, whereas the consortium of working capital lenders held a first charge over current assets and second charge over fixed assets. Thus, the entire asset base of the Corporate Debtor stood fully encumbered in favour of the Answering Respondents at the time when STCI entered into the loan arrangement.

56. He submitted that the Term Loan Agreement dated 29.11.2017 executed by STCI itself clearly stipulated that the proposed security structure, namely first charge over fixed assets and second charge over current assets, was conditional upon obtaining 'No Objection Certificates' (NOCs) from all existing secured creditors. Therefore, the very creation of security in favour of STCI was contingent upon fulfilment of such conditions.

57. It is submitted that although certain NOCs were issued by the consortium lenders, including SBI, such NOCs were expressly conditional. The conditions mandated (i) execution of an inter se agreement among all secured creditors governing the pari passu charge, and (ii) issuance of a reciprocal NOC by STCI in favour of SBI acknowledging such pari passu arrangement. These conditions were fundamental and went to the root of creation of any valid security interest.

58. Shri Sinha submits that it is an admitted position that neither of these conditions were ever fulfilled. No inter se agreement was executed and no reciprocal NOC was issued by STCI. Consequently, the conditional NOCs never attained legal validity or enforceability. In law, a conditional consent does not crystallize into an enforceable right unless the stipulated conditions are strictly complied with. Therefore, the alleged pari passu charge claimed by STCI never came into existence.

59. He further submitted that the NOCs issued by other banks were themselves contingent upon the effectiveness of SBI's NOC. Since SBI's NOC never became operative, all other NOCs also failed, thereby rendering the entire claim of STCI as a secured creditor legally untenable.

60. It is his legal submission that the above legal position stands conclusively settled by the judgment of the Hon'ble High Court of Telangana in **"Andhra Pradesh State Financial Corporation vs. Kotak Mahindra Bank & Ors., Writ Petition No. 43027 of 2019"** wherein it has been categorically held that mere issuance of NOC or registration of charge does not create a valid pari passu charge in absence of a binding contractual

arrangement. The Hon'ble Court in Para 36 has clearly held that registration of charge is only a procedural formality and cannot substitute actual creation of charge.

61. He submits that, this Appellate Tribunal in **“Avil Menezes vs. Hinduja Leyland Finance Limited, Company Appeal (AT) (Insolvency) No. 555 of 2024”** has held that even if a charge is registered under Section 77 of the Companies Act, the same cannot be treated as **valid in liquidation in absence of valid and effective NOCs from existing secured creditors.**

62. It is his submission that in view of the above the STCI cannot be treated as a secured creditor and its entire claim is fundamentally misconceived.

63. Shri Sinha further submits that even otherwise; the Appellant never held any exclusive charge over the assets of the Corporate Debtor. The security was always shared as part of a consortium arrangement, either on first pari passu or second pari passu basis. Thus, the security interest was a joint security interest.

64. It is his submission that secured creditors holding 69.15% in value initially relinquished their security interest, and subsequently Karnataka Bank and Indian Bank also relinquished their security, thereby taking the total relinquishment to more than 85%. Thus, an overwhelming majority of secured creditors relinquished their security interest.

65. It is further submitted that Section 52(4) of the IBC mandates that enforcement of security must be in accordance with applicable law, and in

the present case, the applicable law is Section 13(9) of the SARFAESI Act. Under Section 13(9), any decision taken by secured creditors representing not less than 60% in value is binding on all secured creditors. Since the statutory threshold was exceeded (85%), the decision to relinquish security became binding upon STCI by operation of law.

66. It is his submission that the Corporate Debtor was sold as a going concern through e-auction, which necessarily implies that assets were sold as a whole and not asset-wise. Therefore, no bifurcation of assets or allocation of proceeds based on asset class is permissible.

67. Ld. Sr. Counsel further submits that this issue stands settled by this Hon'ble Tribunal in *Mr. Srikanth Dwarakanath, Liquidator of Surana Power Limited vs. Bharat Heavy Electricals Limited, Company Appeal (AT) (Insolvency) No. 1510 of 2019*. He places further reliance is placed on *State Bank of India vs. Soni Ispat & Ors., Appeal No. R-53 of 2013 (DRAT)* which demonstrates that in cases of joint security, decision of majority creditors binds all creditors irrespective of charge ranking.

68. Ld. Sr. Counsel submits that upon commencement of liquidation on 19.12.2023, STCI was required to comply with statutory obligations under Section 52 of the IBC and Regulation 21A and Regulation 37 of the Liquidation Regulations.

69. He submitted that Regulation 21A(2) mandates that a secured creditor must pay its share of CIRP costs and workmen dues within 90 days. The said period expired on 19.03.2024. Despite specific communications by

the Liquidator dated 21.02.2024, STCI failed to make such payment. He further submitted that Regulation 21A(3) clearly provides that failure to comply results in automatic inclusion of the asset into the liquidation estate. This is a statutory consequence and requires no further adjudication. It is also submitted that Regulation 37 mandates that the secured creditor must intimate the liquidator of the realization price. STCI failed to comply with this requirement as well.

70. **To buttress his submission**, he relies upon the following judgments:

- *Phoenix ARC Pvt. Ltd. vs. Kuldeep Verma, Liquidator of KS Oils Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 592 of 2024, decided on 20.03.2025 (Paras 16, 18, 21, 22; Pages 1–14 of compilation; MANU/NL/0236/2025)*
- *Small Industries Development Bank of India vs. Vijendra Sharma, Company Appeal (AT) (Insolvency) No. 1027 of 2021, decided on 02.11.2022 (Paras 16, 21; Pages 15–21 of compilation; MANU/NL/0839/2022)*
- *Suraksha Assets Reconstruction Pvt. Ltd. vs. Varsha Bagri, Company Appeal (AT) (Insolvency) No. 650 of 2024 upheld by Hon'ble Supreme Court in Civil Appeal No. 2683 of 2025 dated 03.03.2025.*
- *State Bank of India vs. Navjit Singh, Company Appeal (AT) (Insolvency) No. 151 of 2022.*

All these judgments clearly establish that non-compliance with Regulation 21A results in automatic vesting of secured assets into the liquidation estate.

71. Ld. Sr. Counsel submitted that the definition of “secured creditor” under the IBC does not create any distinction between first charge holder, second charge holder or subordinate charge holder. Similarly, Section 53 of the Code provides for distribution without creating any sub-classification among secured creditors.

72. He submitted that it is a settled principle of law that unless expressly provided, no “class within a class” can be created. Therefore, the Appellant cannot claim preferential treatment based on alleged first charge.

73. It is further submitted that a dissenting financial creditor cannot claim higher distribution based on security value.

74. In this regard reliance is placed upon:

- *Oriental Bank of Commerce vs. Anil Anchalia, Liquidator of M/s Bala Techno Industries Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 547 of 2022*
- *State Bank of India vs. IDBI Bank & Ors., Company Appeal (AT) (Insolvency) No. 321 of 2024*

which clearly hold that distribution must be based on admitted claims and not on value of security.

75. In view of the aforesaid facts and submissions, Ld. Sr. Counsel for Banks submitted that the present Appeal is wholly misconceived, devoid of merit and contrary to the statutory scheme of the Insolvency and Bankruptcy Code. The Appellant has neither perfected a valid security interest nor complied with mandatory statutory requirements. Further, the

decision of majority secured creditors is binding in law and the consequence of non-compliance with Regulation 21A squarely applies. Accordingly, he prayed for the dismissal of the present Appeal and the impugned order be upheld in the interest of justice.

Submissions of the Respondent No. 4/Successful Auction Purchaser

76. Shri Malak Bhatt Ld. Counsel for the Respondent No.4/ Shri Rakesh Ramanlal Shah, who is the Successful Auction Purchaser of IMP Powers Limited submits that the Corporate Debtor has been purchased as a going concern pursuant to a duly conducted liquidation sale under the supervision of the Adjudicating Authority, and therefore, the sanctity of such sale deserves utmost protection in law.

77. Ld. Counsel submits that in the first appeal, has been filed challenging the order dated 22.04.2024 passed by the Ld. NCLT, Ahmedabad Bench, whereby the application filed by Appellant/STCI seeking to set aside the e-auction process and stall the liquidation sale was dismissed. The Respondent submits that the said order rightly permitted continuation of the liquidation process, thereby enabling value maximization of the Corporate Debtor.

78. It is submitted that the second appeal, being Company Appeal (AT) (Insolvency) No. 1675 of 2024, challenges the order dated 20.08.2024, whereby the Adjudicating Authority directed issuance of the Sale Certificate in favour of the Successful Auction Purchaser. The Respondent submits that such issuance was in continuation of a concluded and valid auction

process and was further supported by the consent of all lenders, including STCI.

79. It is his submission that the third appeal, being Company Appeal (AT) (Insolvency) No. 893 of 2025, challenges the order dated 05.11.2024, whereby reliefs, concessions, waivers and immunity under Section 32A of the Code were granted to the Successful Auction Purchaser. It is emphatically submitted that the said appeal is barred by a delay of 171 days and is liable to be dismissed on this ground alone, apart from merits.

80. He submits that even assuming, without admitting, that STCI succeeds in its challenge and establishes that it was wrongly prevented from enforcing its security interest, the statutory framework under the Insolvency and Bankruptcy Code, 2016 places an absolute cap on its recoverable amount. It is submitted that Section 52(7) clearly mandates that a secured creditor is entitled only to the extent of its admitted claim and any surplus realized must necessarily be remitted to the Liquidator. Therefore, even if STCI were permitted to independently realize its security interest, it could not, in law, appropriate any amount beyond Rs.39.55 Crores, being its admitted claim.

81. Ld. Counsel submits that Regulation 21A(2)(b) of the Liquidation Regulations reinforces this statutory position by mandating that any excess realization beyond the secured debt must revert to the liquidation estate. Thus, both the Code and the Regulations operate in tandem to ensure equitable distribution and prevent unjust enrichment. It is therefore submitted that even on STCI's own case, the maximum relief that can be

granted is limited to payment of Rs.39.55 Crores. In light of the sale consideration of Rs.78 Crores already realized, all secured creditors, including STCI, stand fully protected and adequately secured, and no prejudice is caused to STCI in any manner whatsoever.

82. Ld. Counsel submits that after issuance of the Sale Certificate and payment of the entire consideration, the Successful Auction Purchaser has undertaken extensive, bona fide and irreversible steps towards revival and operation of the Corporate Debtor. He submits that the Respondent has incurred substantial expenditure to preserve and maintain the assets of the Corporate Debtor, including safeguarding the Silvassa plant from deterioration, despite continuous litigation initiated by STCI. The Respondent has actively taken steps to restore corporate governance by engaging with stock exchanges for revocation of suspension of trading of shares, and by completing all statutory filings before the Ministry of Corporate Affairs and Registrar of Companies reflecting change in control and management.

83. He submitted that multiple Board Meetings and an Extraordinary General Meeting have been convened to streamline governance structures, and responses have been filed before tax authorities in relation to pending GST audits and excise matters. The Respondent No. 4 has discharged statutory and operational liabilities including payment of utilities, property taxes, and electricity dues across various units, and has taken steps to ensure continued operation of the factory by renewing licences and effecting mutation of industrial premises.

84. It is submitted that the Respondent has also issued purchase orders for plant maintenance, initiated NABL and ISO certification processes, engaged with suppliers and customers including registration with PGCIL, and ensured procurement of raw materials necessary for operations. Managerial and technical personnel have been recruited, salaries and statutory dues including PF and ESI have been paid, and active communication has been established with customers regarding revival of the Corporate Debtor along with maintenance of ongoing orders.

85. It is submitted that all these steps are documented, substantial, and irreversible, having been undertaken strictly after issuance of the Sale Certificate and full payment. Any attempt to set aside the sale would necessarily require undoing these actions, which is neither feasible nor equitable.

86. Ld. Counsel submitted that no prejudice whatsoever is caused to STCI, as the sale proceeds of Rs.78 Crores, along with accrued interest of approximately Rs.7-8 Crores, are more than sufficient to satisfy STCI's admitted claim of Rs.39.55 Crores, even if its case is accepted in entirety.

87. He submitted that, in stark contrast, setting aside the sale at this stage would result in grave, irreversible and irreparable prejudice to the Successful Auction Purchaser, who has already paid the full consideration, acted upon the Sale Certificate, and invested significant resources in reviving the Corporate Debtor. Such interference would also lead to destruction of value for all stakeholders, including secured creditors and

employees, as the Corporate Debtor has already transitioned into a revived, operational entity under the Successful Auction Purchaser.

88. He submitted that the balance of equities overwhelmingly favours protection of the concluded sale, and any attempt to unsettle the same would be contrary to the settled principles of insolvency law, which prioritize finality, value maximization, and revival of the Corporate Debtor. Ld. Counsel submits that the appeals filed by STCI are devoid of merit and liable to be dismissed, and the sale in favour of the Successful Auction Purchaser deserves to be upheld in entirety.

Analysis and findings

89. We have heard the Ld. Counsels of the parties in great detail, gone through the voluminous records of the case and the written submission of the parties. We now take up the first appeal and second appeal together as they are sequential in nature.

90. The key issue to be determined in First Appeal is Whether the decision of the Liquidator to compulsorily bring the security interest of the Appellant (STCI Finance Ltd.) in the Liquidation Estate is in compliance with the provisions of the code?

91. The main issue in the second appeal relates to distribution of liquidation proceeds under Section 53 and the criteria to be adopted for such distribution. We would now examine these issues in the same order.

92. The present dispute arises in the liquidation of the Corporate Debtor, IMP Powers Limited, pursuant to liquidation order dated 19.12.2023. The Appellant, a secured financial creditor with an admitted claim of approximately Rs.39.55 Crores, asserts its right to stand outside liquidation and realize its alleged secured assets under Section 52 of the Code. The issue here is not merely about assertion of such right, but whether the Appellant actually fulfilled the statutory conditions necessary to operationalize that right, especially in a consortium lending structure where multiple secured creditors exist.

93. The Appellant has contended that it is a secured creditor holding a first pari passu charge over the fixed assets of the Corporate Debtor pursuant to the supplementary mortgage dated 04.08.2018, and that it had expressly elected not to relinquish its security interest while filing its claim on 17.01.2024 for an amount of approximately Rs.39.55 Crores. It is argued that the Liquidator, despite acknowledging such election in communications dated 17.02.2024 and 19.02.2024, proceeded to wrongly assume relinquishment and issued the e-auction sale notice dated 08.03.2024 without handing over possession of secured assets or enabling enforcement. The Appellant submits that such conduct violates Section 52, Regulation 21A, and Regulation 37, and that the impugned order has failed to appreciate its statutory rights.

94. Per contra, the Respondents, including the Liquidator and consortium banks, have contended that the Appellant's claim of being a secured creditor itself is legally untenable, as the alleged first pari passu

charge was conditional upon execution of an inter se agreement and reciprocal NOCs, which were never fulfilled, thereby rendering the charge ineffective. It is further contended that even assuming the Appellant to be a secured creditor, it failed to comply with mandatory requirements under Regulation 21A, including payment of CIRP costs and workmen dues within 90 days (i.e., by 18.03.2024), and also failed to intimate any realization value or take steps under SARFAESI. The Respondents have emphasized that the Appellant did not participate in multiple Stakeholders' Consultation Committee meetings and instead sought to stall the process through litigation. It is also submitted that a substantial majority of secured creditors (more than 69%, subsequently exceeding 85%) had relinquished their security interest, thereby binding the Appellant under Section 13(9) of SARFAESI.

95. The Corporate Debtor had availed multiple credit facilities from consortium lenders including SBI and other banks prior to availing a term loan of Rs. 25 Crores from the Appellant in 2017-2018. The Appellant's claim of first pari passu charge is rooted in a supplementary mortgage dated 04.08.2018. However, the record shows that the NoCs issued by consortium lenders, particularly SBI were conditional and reciprocal in nature, and such conditions were never fulfilled by the Appellant. Consequently, a fully perfected and enforceable exclusive charge in favour of the Appellant never came into existence.

96. The liquidation of the Corporate Debtor was ordered on 19.12.2023. The Appellant filed its claim on 17.01.2024 and expressly indicated that it

had not relinquished its security interest. The Liquidator admitted its claim on 17.02.2024. However, subsequently, based on legal opinion and the conduct of majority creditors, the Liquidator proceeded on the basis that the security interest stood relinquished as part of liquidation estate.

97. It is an admitted position that secured creditors holding 69.15% voting share had initially relinquished their security interest, this figure later went up to 85% when 2 more banks relinquished their security interest.

98. On 21.02.2024, the Appellant objected and sought permission to realize its security under Section 52. However, significantly, no concrete steps for realization were taken thereafter. Instead:

- The Appellant did not participate in multiple SCC meetings dated 22.02.2024, 01.03.2024, 02.04.2024 and 04.05.2024 despite notice.
- The Appellant did not intimate any proposed realization value or identify a buyer.
- The Appellant did not initiate any proceedings under SARFAESI Act.
- The Appellant did not comply with the requirement of payment of CIRP/liquidation costs within prescribed timelines.

99. On 08.03.2024, the Liquidator issued the first e-auction notice for sale of the Corporate Debtor as a going concern. The Appellant, instead of taking enforcement steps, filed an application before the Adjudicating Authority on 18.03.2024 seeking to restrain the liquidation process and enforce its rights.

100. At this stage, it is necessary to examine the Appellant's claim that it holds a first pari passu charge over the assets of the Corporate Debtor. Upon perusal of the record, we find that when the Appellant entered into the Term Loan Agreement dated 29.11.2017, the assets of the Corporate Debtor were already charged in favour of the existing consortium lenders, including State Bank of India, as reflected in Clauses 1.13, 1.14, 1.15 and 1.56 read with Clause 3.11 and Schedule I and Schedule II (Part A & B) of the financing documents.

1.13 "Consortium Lenders" or "Existing Lenders" means the Consortium Term Lenders as defined in Clause 1.14 herein and the Consortium Working Capital Lenders as defined in Clause 1.15 herein.

1.14 "Consortium Term Lenders" means the lenders who have sanctioned/granted Term Loan to the Borrowers as more particularly mentioned in the Part A of Schedule II hereunder written.

1.15 "Consortium Working Capital Lenders" means the lenders who have sanctioned granted Working Capital Facility Loan to the Borrowers as more particularly mentioned in the Part B of the Schedule II hereunder written.

1.56 "Security" or "Secured Assets" means (i) first and exclusive charge granted to be granted to the Lender by the Third Party Security Provider(s) on the Pledged Securities (as defined hereinabove) and (ii) first pari passu charge to be shared with the Consortium Term Lenders granted to be granted to the Lender by the Borrowers on the Fixed Assets/Mortgaged Property (as defined hereinabove) and charge on any other assets/security (moveable and/or immovable) that may be pledged hypothecated/ mortgaged/ transferred/ assigned/ charged by a Borrowers/ Guarantor (s)/Third party Security Provider(s) in favour of the Lender as and by way of

security for payment of any Outstanding Amounts/Obligations including all Related Rights pertaining thereto.

3.11 The Borrowers shall create/extend mortgage on the Mortgaged Property on first pari passu basis to be shared along with the Consortium Term Lenders by depositing title deeds with IDBI Bank by way of constructive delivery and duly noting the same with the Sub-Registrar of Assurances and causing their authorised signatory to execute a declaration in favour of the Lender recording and confirming the same. However, it is agreed that on the payment/repayment of the Term Loan granted by the Consortium Term Lenders, the said title deeds shall be handed over directly by IDBI Bank to the Lender and the Borrowers shall along with the letter from the Consortium Lenders ceding charge submit to the Lender a letter to the said effect from the Consortium Lenders.

SCHEDULE - II

A DETAILS OF THE TERM LOAN GRANTED BY THE CONSORTIUM TERM LENDERS

Sr. No	Name of Lenders	Sanctioned amount (Rs. In Cr)	Outstanding as on 31.03.2017 (Rs. In Cr)	Undisbursed Loan amount
1.	State Bank of India	18.00	8.00	3.21

B DETAILS OF THE WORKING CAPITAL GRANTED BY THE WORKING CAPITAL LENDERS

Bank	Sanctioned amount (Rs. In Cr)	Sanctioned amount (Rs. In Cr)
	CC	NFB [LC & BG Limits]
State Bank of India	37.48	99.43
Bank of India	21.50	36.83
Karnataka Bank	9.50	36.94
IDBI Bank	9.52	38.83
Axis Bank	10.66	29.84
TOTAL	88.66	241.87

101. We further note that the security proposed in favour of the Appellant under Clause 7.2(a)(ii) and 7.2(a)(iii) was clearly subject to obtaining valid No Objection Certificates from the existing lenders, and the existing lenders ceding first pari-passu charge for creating first pari-passu charge by the Appellant (STCI here). The relevant clauses of the agreement are extracted below:

7.2 (a) (ii) the Borrowers shall furnish to the Lender No Objection Certificate from the Consortium Lenders for creation of first pari passu charge in favour of the Lender by way mortgage of the Fixed Assets; or

7.2 (a) (iii) the Borrowers shall furnish to the Lender Letter ceding first pari passu charge from the Consortium Lenders for creation of pari passu charge in favour of the Lender by way of mortgage of the Fixed Assets;

102. We now take a look at the No Objection Certificate and letter ceding first pari passu charge issued by the SBI and by Karnataka Bank. The letters of NOC and ceding of first pari passu charge of all consortium lenders were identical in nature to Karnataka Bank.



भारतीय स्टेट बैंक
STATE BANK OF INDIA

STCI Finance Limited,
A/B I-802, A- Wing, 8th Floor,
Marathon Innova, Marathon Nextgen
Compound, Off. Ganpatrao Kadam
Marg, Lower Parel, Mumbai-400 013

10

CB: AMT-VII: 18-19:132

Date: 14.06.2018

Dear Sir,

LETTER CEDING PARI-PASSU CHARGE

1. We, State Bank of India (SBI), Commercial Branch, N.G.N. Vaidya Marg, Fort, Mumbai hereby confirm that, notwithstanding anything to the contrary contained in or by virtue of various securities created/ to be created by M/s IMP Powers Ltd, having their Registered Office at Survey No. 263/3/2/2, Village Seyli, Umerkoi Road, City: Silvassa, Dist: Dadra & Nagar Haveli, State: Dadra & Nagar Haveli, India, Pin: 396230 (hereinafter referred to as "the company") in your favour and first charge on Fixed Assets created in our favour for our Term Loan aggregating Rs.9.00 crores sanctioned to the company, shall rank 1st pari-passu with the charges created/ to be created by the company in favour of the Banks as mentioned below:-

(Rs. in crores)

Bank	
State Bank of India- Term Loan	9.00
STCI Finance Limited- Term Loans (sanctioned vide letter dated 16.05.2017)	25.00

for the credit facilities sanctioned by them to the company, including any bridge loan(s) / interim disbursement(s) and together with interest and all other moneys payable to them under their respective Loan Agreements/ Letters of sanction/ Memorandum of Terms and Conditions.

2. We also have no objection in IMP Powers Ltd creating 1st pari-passu charge on the Fixed Assets of the company in favour of STCI Finance Limited for securing the Term Loan of Rs. 25.00 crores sanctioned by STCI Finance Limited to the company.

3. We hereby further agree and confirm that we shall enter into a pari passu arrangement with you and the Company defining the rights and obligations of the parties inter se and also providing that the securities created / to be created by the Company under or by virtue of then aforesaid mortgages / charges shall rank pari passu for all purposes and to all intents and without any preferences or priority of one over others including therein specific provisions regarding insurance, custody of title deeds, application and realization of sale proceeds, etc. in such form and in such manner as may be mutually agreed upon.

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ए.ए.टी. - VII, मुंबई नगर,
ए.ए.टी. एम, निहा मार्ग,
बँक स्ट्रीट, हॉममन चौरस,
फोर्ट, मुंबई - 400 001

वाणिज्य शाखा (अर्थ),
ए.ए.टी. - VII, मुंबई नगर,
ए.ए.टी. एम, निहा मार्ग,
बँक स्ट्रीट, हॉममन चौरस,
फोर्ट, मुंबई - 400 001


Commercial Branch (Advances),
AMT-VII 3rd Floor,
N.G.N. Vaidya Marg,
Bank Street, Horniman Circle,
Fort, Mumbai - 400 001.

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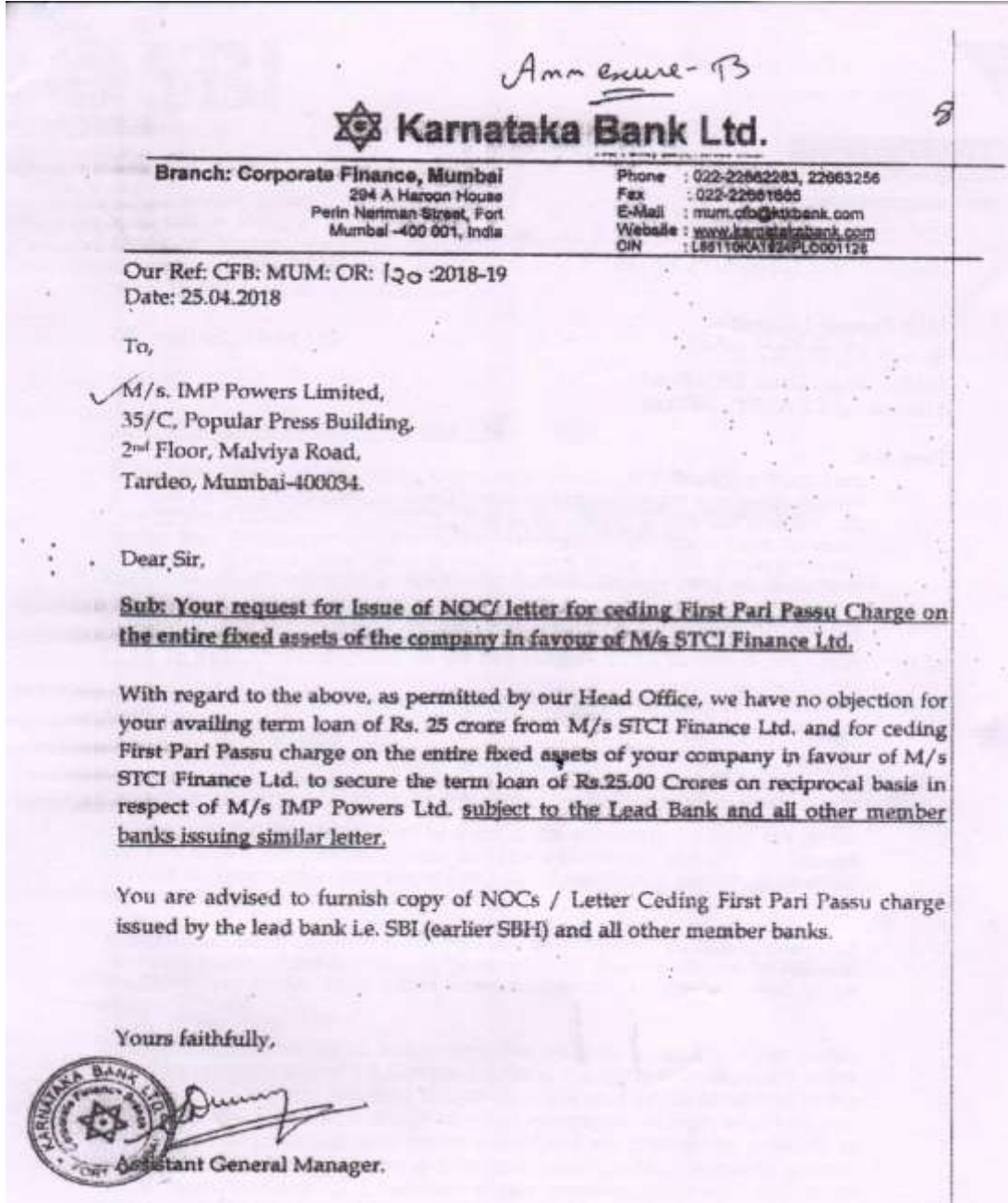
4. We also authorise you to make a mention of the 1st pari passu charges in favour of ourselves and your institution on the fixed assets of the Company in the form of particulars of charge required to be filed by the Company with the registrar of the companies pursuant to the provisions of the Companies Act, 2013.

5. Please acknowledge receipt and please note that our ceding of charge is on reciprocal basis and is subject to receiving similar letter ceding pari passu charge in our favour by STCI Finance Limited.

Yours faithfully,


CM & Relationship Manager (AMT-VII)





103. We note from the letter of the SBI ceding pari-passu Charge that it involved the following:

- i. SBI agreed to allow STCI to hold 1st pari-passu charge over the fixed assets of the Company along with it. State Bank of India Term Loan amounted to Rs. 9 crores and STCI Finance Term Loan of Rs. 25 crores were to be noted in the charge.

- ii. State Bank of India also gave NOC to IMP Powers Ltd (Corporate Debtor) to create 1st pari-passu charge on the fixed assets of the Company in favour of STCI for securing the Term Loan of Rs. 25 crores.
- iii. SBI also agreed to enter into a pari-passu agreement with STCI and the Company defining the rights and obligations of parties inter se.
- iv. It also authorised STCI to make a mention of 1st pari passu Charge on Fixed asset of Company in the name of SBI and STCI with Registrar of Companies.
- v. STCI was to acknowledge the receipt and SBI clearly stated that ceding of charge was on reciprocal basis subject to similar letter by STCI ceding pari-passu charge in SBI's favour by the STCI.

104. The most important condition in the letter related to reciprocal ceding of pari-passu charge by the STCI. We note from the records that based on the aforesaid authorisation, the Company created 1st pari passu charge on fixed assets of the company in favour of STCI also. Secondly STCI registered the 1st pari-passu charge on fixed assets of the company with Registrar of Companies. Most importantly, we note that no letter was issued by STCI ceding the 1st Charge on pari-passu basis in favour of SBI nor was the inter-se agreement executed between SBI, STCI and the company/CD. In view of non-compliance with the conditions viz. the absence of a valid inter se agreement, and reciprocal ceding of 1st pari-passu charge by the STCI, the alleged pari passu charge never became operative in law.

105. We now take a look at the letter from Karnataka Bank to IMP Power Ltd regarding issue of NOC/ceding of 1st pari passu charge by the bank on the fixed assets of the company. It was emphasised that this was subject to Lead Bank SBI and all other banks in the consortium ceding such charge issuing such letter. Similar letters were issued by all members of the consortium. As noted in earlier para, the letter issued by the SBI was a conditional letter to STCI and the conditions mentioned therein were not fulfilled by the STCI. The conditional letters issued by all member banks in consortium therefore could not take effect, due to non-operation of letter by Lead Bank SBI. A pari passu charge is inherently a shared charge and does not confer any exclusive or superior right upon one creditor. Therefore, the Appellant cannot claim an independent right to enforce the assets or to stand outside the liquidation process on this basis.

106. The right to enforce the security interest outside the liquidation estate under Section 52 of the IBC Code is a qualified statutory right, subject to strict compliance with the conditions laid down in the Code and the Liquidation Regulations. It cannot be exercised in isolation from the collective framework of liquidation.

107. Section 52 of the IBC Code deals with the issue and the same is extracted below:

“Section 52-Secured creditor in liquidation proceedings

(1) A secured creditor in the liquidation proceedings may—

(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or

(b) realise its security interest in the manner specified in this section.

(2) Where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

(3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either—

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

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

(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

(5)

(6)

(7)

(8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.”

108. In this case STCI the Appellant submitted its claim on 17.01.2024 for an amount of Rs. 39,55,34,828/- and also submitted to the Liquidator in prescribed form stating their intention to realise its security interest in accordance with Section 52(1)(b) of the Code. It is the submission of the Appellant that the Liquidator admitted the claim of the Appellant on 17.02.2024 but he unilaterally assumed relinquishment of the Appellants security interest without consent.

109. In this context, we now take a look at Regulation 21A of the 'Liquidation Regulation'.

“Regulation 21A: Presumption of security interest.

(1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:

PROVIDED that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.

(2) Where a secured creditor proceeds to realise its security interest, it shall pay–

(a) as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of [section 53](#), as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date; and

(b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date:

PROVIDED that where the amount payable under this sub-regulation is not certain by the date the amount is payable under this sub-regulation, the secured creditor shall pay the amount, as estimated by the liquidator:

PROVIDED FURTHER that any difference between the amount payable under this sub-regulation and the amount paid under the first proviso shall be made good by the secured creditor or the liquidator, as the case may be, as soon as the amount payable under this sub-regulation is certain and so informed by the liquidator.

(3) Where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.]”

110. Liquidator in his email dated 21.02.2024 informed the Appellant that in terms of Regulation 21A he has to within 90 days from the liquidation commencement date paid to the Liquidator:

- a. Insolvency Resolution Process cost and liquidation costs in full;
- b. Workmen dues for the period of 24 months preceding the liquidation commencement date as it would have shared in case it had relinquished the security interest.

Liquidator also mentioned that the date of liquidation was 19.12.2023 and he wanted to know from the Appellant as to what steps have been taken to realise the security interest as 90 days period is near. However, the Appellant failed to respond to these queries of liquidator.

111. It is on record that CIRP costs were approved by the 14th CoC held between 28th to 31st July, 2023 and the concerned CoC Members were asked to share the balance due. In this regard, we further note that in the second Stakeholders Consultation Committee meeting held on 22.02.2024 agenda item no.8 referred to the payment of pending CIRP cost by members of the CoC which was also circulated to Appellant even though it was not present in the meeting. As per the same the Appellant had to pay an amount of Rs. 34,11,727/- as balance CIRP cost. The relevant agenda is extracted below:

“8) Request for the Cost Contribution by the members of the Stakeholder Consultation Committee.

The Chairman informed the members that the Liquidator had sent an email to all the bankers on 08.02.2024 requesting them to contribute towards the cost incurred in running the process. The said email comprised of a sheet briefing the details of the Unpaid CIRP Cost for

the period 01-10-2023 to 18-12-2023 and its bifurcation in voting ratio, along with details of the Total Amount Due, Total Amount Paid and Deficit which is required to be contributed by each member.

A Chartered Accountant certificate with respect to the same has also been shared to the members. Further, the members are requested to share their contributions at the earliest for the smooth running of the

IMP POWERS LTD							
DETAILS OF CIRP COST.							
		CERT DATE	FROM	TO			
		2024-02-01	2023-10-01	2023-12-18			
UNPAID CIRP COST		69,79,157					
					DEFICIT IN CIRP COST		
NAME OF THE BANK	% SHARE	AMT PAYABLE	AMT PAID	DATE PAID	TOTAL AMOUNT PAYABLE	TOTAL AMOUNT PAID	Head up to Paid
STATE BANK OF INDIA	36.4378%	25,43,053	-		2,99,94,307	2,74,51,255	25,43,053
BANK OF INDIA	15.9030%	11,09,901	-		1,28,73,113	58,63,651	70,09,462
INDIAN BANK	11.0708%	7,72,646	-		91,13,498	1,23,14,731	12,01,133
KARNATAKA BANK	9.4163%	6,57,111	-		79,96,129	67,32,404	12,63,725
IDBI BANK	9.2689%	6,47,729	-		76,65,215	54,67,863	21,97,352
STCI	7.7401%	5,40,192	-		63,71,923	29,60,196	34,11,727
AXIS BANK	4.8801%	3,40,589	-		40,48,381	36,93,894	3,54,487
CANBANK FACTORS	4.8369%	3,37,156	-		39,77,074	23,66,125	16,10,949
ADISUN INVESTMENTS	0.2342%	16,345	-		1,93,144	0	1,93,144
AMBIT FINVEST	0.1644%	11,474	-		1,35,606	0	1,35,606
ICICI BANK	0.0424%	2,959	-		22,838	0	22,838
TOTAL		69,79,157	-		8,23,91,227	6,68,30,119	1,55,41,108

The members agreed to contribute as soon as possible and had not further questions regarding the same.”

112. In the Second SCC meeting held on 22.02.2024 the liquidator put-up an agenda for approval of liquidation cost, which was subsequently approved. The extract of relevant agenda item no.9 is extracted below:

ITEM NO. 9

TO TAKE NOTE AND APPROVE THE LIQUIDATION COST.

The Chairman apprised the members of the SCC that as per Regulation 31A (6B) of Insolvency and Bankruptcy Board of India (Liquidation Regulations), 2016, the liquidator shall present to the consultation committee the actual liquidation cost. Presently the Liquidator has incurred/paid following cost:

S.No	Name of the Professional	Professional Fees Proposed
a	VS Jadon and Co. Valuers LLP Valuer-1	Rs. 1,79,000/- plus taxes as applicable
	IndiaAppraisers.com Pvt. Ltd Valuer-2	Rs. 1,70,000/- plus taxes as applicable
b	Adv. Arjun Seth (Drafting and Appearance in various Interlocutory Applications)	Rs. 11,000/- per Interlocutory Application till its disposal.
c	Adv. Sumit Sinha (Obtaining Legal Opinion)	Rs. 60,000/-
d	RAMEST THE SOLUTION Two Guards at Kandiwali Eight Guard and Two Supervisors at Silvasa	Per Guard @ 16,000/- Per Supervisor @ 20,000/-
e	Mr. Bhawar Singh	Rs. 75,000/- per month
f	Harsh Kothari & Associates	Rs. 20,000/- per month
g	Salary to Employees at Silvasa	Rs. 1,37,673
	Salary to Employees at Mumbai	Rs. 1,48,180
h	Traveling (in the month of December and January)	Rs. 1,78,205

i	Electricity Bill Payment Silvasa	Rs. 2,68,066
	Electricity Charges of Mumbai	Rs. 28,495
j	Miscellaneous Expenses at Silvasa	Rs. 14,648
	Miscellaneous Expenses at Mumbai	Rs. 8,840
	Pending Petty Cash Payment at Mumbai	Rs. 37,822
k	Vehicle Maintenance	Rs. 39,405

For ease and reference to the members the Liquidator has divided the above agenda in various parts in order to seek approval on the matter:

113. Under Regulation 21(2) the secured creditor who intends to realise its security interest outside the liquidation estate must pay its share of CIRP cost and workmen dues within 90 days. The said period expired on 19.03.2024. We note that despite specific communication from the liquidator dated 21.02.2024 the STCI failed to make such payment. We further note that till 02.04.2024 the Appellant has not made payments of CIRP costs and liquidation costs and had also not furnished to the liquidator its plan of action to realise its secured interest.

114. In the present case, the failure to comply with Regulation 21A(2) results in a statutory consequence under Regulation 21A(3), whereby the secured asset forms part of the liquidation estate. This consequence is automatic and leaves no discretion either with the Liquidator or with this Tribunal.

115. Further, we note that the Appellant's charge is not the exclusive charge on the fixed assets of the CD. It shares the first charge on the assets on pari-passu basis with SBI and the other banks hold secondary charge

on the said assets. The record clearly establishes that the alleged pari passu charge was conditional and never perfected due to non-execution of inter se agreements and reciprocal NOCs. The Appellant also did not seek relinquishment by SBI in its favour to have exclusive charge on the assets but it did not do so. SBI on the contrary relinquished its security interest to the liquidation estate. Thus, the Appellant cannot claim any superior or independent right over the secured assets.

116. In a consortium lending structure involving joint security and involving disposal of fixed assets, Section 13(9) of SARFAESI becomes the “applicable law” under Section 52(4) of the Code. Where more than 60% in value of secured creditors decide upon a course of action, such decision becomes binding on the remaining creditors.

117. In the present case, the threshold was not merely met but substantially exceeded, with more than 69%—and subsequently over 85%—of secured creditors relinquishing their security. The Appellant, therefore, cannot unilaterally assert a contrary position to derail the liquidation process.

118. We also note the concession made by the Ld. Counsel for the Appellant during the proceedings in IA/965(Ahm)/2024 recorded in the order dated 20.08.2024 which is extracted below:

“Further the Learned senior counsel appearing for the once of the Financial Creditors/STCI Finance Limited on instructions also stated that the STCI Finance Limited has also no objection on the reserve price fixed by the SCC, and sale through E-Auction on 21.05.2024 as a going concern as mentioned above for Rs.78,00,00,000/-”

It is clear from the above, that the Ld. Counsel for the Appellant had agreed to sale of the assets of the CD as a going concern.

119. The Appellant had relied upon the judgment in **“Canara Bank vs. S. Rajendran, (2024 SCC OnLine NCLAT 390)”** of this Appellate Tribunal, wherein the issue was whether a secured creditor could be compelled by the Liquidator to relinquish its security interest, and it was held that such relinquishment must be voluntary and cannot be forced. The facts of the present case, however, stand on a different footing. Here, the inclusion of the secured assets in the liquidation estate is not the result of any coercive action on the part of the Liquidator, but is a consequence of the Appellant’s own failure to comply with the mandatory requirements under the Liquidation Regulations. The record reflects that the Appellant did not pay the CIRP costs and workmen dues within the prescribed period of 90 days as required under Regulation 21A(2), nor did it take any effective steps to realize its security interest under SARFAESI Act or intimate the realization value as required under Regulation 37. In terms of Regulation 21A(3), such non-compliance results in an automatic statutory consequence whereby the secured asset forms part of the liquidation estate. Therefore, the present case does not involve any forced relinquishment, but a deemed relinquishment by operation of law. In these circumstances, the principle laid down in *Rajendran (supra)* is clearly distinguishable and does not apply to the present case.

120. The Appellant has relied on **ICICI Bank Ltd. vs. SIDCO Leather Ltd. (2006) 10 SCC 452**, wherein the Hon’ble Supreme Court was dealing with

a situation arising under general recovery laws where the dispute pertained to inter se priority between secured creditors in enforcement proceedings. The Court recognized the principle that a first charge holder would have priority over subsequent charge holders in such enforcement actions. However, the present case arises under the Insolvency and Bankruptcy Code, which is a complete and self-contained framework governing collective insolvency and liquidation. Moreover, in the present case, the Appellant has not been able to establish that it holds a valid and perfected first pari passu charge, as the alleged charge was conditional upon fulfilment of NOC requirements and execution of an inter se agreement, which admittedly never took place. In such a factual and legal context, the principle of priority of charge as laid down in *SIDCO Leather* cannot be applied to the present case.

121. Respondents have also relied on various judgments which are discussed in subsequent paragraphs.

122. In **“Andhra Pradesh State Financial Corporation vs. Kotak Mahindra Bank & Ors., Writ Petition No. 43027 of 2019”** the Hon’ble High Court of Telangana examined whether a valid pari passu charge could be said to exist merely on the basis of issuance of a No Objection Certificate and registration of charge. The Court held that unless there exists a binding contractual arrangement between the lenders, such as an inter se agreement, the mere issuance of an NOC or filing of charge with the Registrar of Companies does not result in creation of a legally enforceable pari passu charge. It was further held that registration of charge is only a

procedural requirement and cannot substitute the substantive act of creation of charge. In the present case, we find that although conditional NOCs were issued, the essential conditions, namely execution of an inter se agreement and issuance of reciprocal Ceding of the charge by the Appellant, were never fulfilled. Thus, applying the ratio of the above judgment, the alleged pari passu charge in favour of the Appellant never came into existence in law, and the Appellant cannot claim the status of a secured creditor on that basis.

123. In **“Avil Menezes vs. Hinduja Leyland Finance Limited, Company Appeal (AT) (Insolvency) No. 555 of 2024 (NCLAT, decided in 2024)”** this Tribunal considered the validity of a charge in liquidation where the charge had been registered but the foundational requirements for its creation were not satisfied. It was held that mere registration of charge under Section 77 of the Companies Act, 2013 does not by itself create a valid and enforceable security interest unless the underlying conditions for creation of such charge, including valid consent of existing secured creditors, are fulfilled. The Tribunal emphasized that in insolvency proceedings, substance prevails over form. In the present case, although reliance is placed on documents suggesting creation or registration of charge, the absence of a valid and effective NOC and inter se agreement renders such charge legally unenforceable. Therefore, the principle laid down in *Avil Menezes* squarely applies, supporting the conclusion that the Appellant cannot be treated as a secured creditor.

124. In “**State Bank of India vs. Soni Ispat Ltd., Appeal No. R-53 of 2013 (DRAT)**” the Ld. Debts Recovery Appellate Tribunal considered the applicability of Section 13(9) of the SARFAESI Act in a situation involving multiple secured creditors holding joint security interests. The Tribunal observed that where the secured assets are subject to a common charge in favour of multiple lenders, the decision regarding enforcement of such assets is to be taken collectively, and once the statutory threshold of 60% in value is met, such decision becomes binding on all secured creditors, irrespective of whether they hold first charge or second charge. **The Tribunal specifically noted that even a creditor claiming a first charge cannot act independently in disregard of the majority decision when the security interest is shared. In the present case, we find that the security over the assets of the Corporate Debtor was not exclusive but was part of a consortium lending structure, with joint and overlapping charges in favour of multiple creditors. It is also not in dispute that secured creditors holding more than the statutory threshold—initially 69.15% and subsequently exceeding 85%—had taken a conscious decision to relinquish their security interest and proceed with liquidation of the Corporate Debtor as a going concern.** We note that Section 13(9) of the SARFAESI Act, being the applicable law under Section 52(4) of the Code, operates squarely in the present case and negates the Appellant’s claim of unilateral enforcement of security interest.

125. In “**Phoenix ARC Pvt. Ltd. vs. Kuldeep Verma, Liquidator of KS Oils Ltd. & Ors., CA (AT) (Insolvency) No. 592 of 2024**”, this Appellate Tribunal examined the consequences of non-compliance with Regulation *Company Appeal (AT) (Ins.) Nos., 1019, 1657 of 2024 & 893 of 2025*

21A of the IBBI (Liquidation Process) Regulations, 2016. It was held that where a secured creditor, despite expressing an intention not to relinquish its security interest, fails to comply with the mandatory requirements under Regulation 21A(2), including payment of CIRP costs and workmen dues within the prescribed timeline, the consequence under Regulation 21A(3) follows automatically, and the secured asset becomes part of the liquidation estate. The Tribunal further observed that mere assertion of a right under Section 52 is not sufficient, and such right must be exercised strictly in accordance with the statutory framework. In the present case, we find that the liquidation order was passed on 19.12.2023, and the statutory period of 90 days expired on 18/19.03.2024. The record clearly reflects that despite specific communication from the Liquidator dated 21.02.2024 calling upon the Appellant to comply, no payment of CIRP costs or workmen dues was not made within the prescribed period. Further, the Appellant did not intimate any proposed realization value as required under Regulation 37. In such circumstances, the consequence under Regulation 21A(3) squarely applies, and the secured assets form part of the liquidation estate by operation of law. We, therefore, find that the ratio laid down in *Phoenix ARC Pvt. Ltd. vs. Kuldeep Verma* squarely applies to the present case and supports the conclusion that the Appellant failed to validly exercise its rights under Section 52.

126. In “**HDFC Bank Ltd. vs. Hema Engineering Industries Ltd., Company Appeal (AT) (Insolvency) No. 346 of 2025**”, this Tribunal held that payment of dues under Section 53 within 90 days, as required under

Regulation 21A(2), is mandatory and cannot be postponed on the ground that the secured creditor wishes to first realize its security. It was also held that failure to make such payment leads to automatic inclusion of the asset in the liquidation estate. In the present case, the Appellant did not deposit the required dues within the prescribed time and did not seek extension, but only asserted its right to realize the security. Applying this principle, the Appellant's non-compliance results in the statutory consequence under Regulation 21A(3), supporting the case of the Respondents. Relevant paras 31 & 34 have been extracted below:

“31. Thus, it is evident from the above material that before Tribunal no request has ever been made by the appellant to provide him sufficient time for the purpose of deposition of dues as required under Section 53 of the IBC. Contrary to this the appellant has requested to grant permission to pay the dues as required under Section 53 of the IBC only after realization of his security interest. It is to be recalled that the provision as contained under Insolvency Regulation 21A (2) (a) pertaining to deposition of such dues in 90 days is a mandatory provision, unless rare circumstances of exceptional nature occurs, in which case time extension may be considered and the same is also not dependent on realisation of security interest by secured creditor and therefore it could not be linked with realisation of security interest. In simple words the payment which is to be made under relevant provisions of Section 52 and 53 of the IBC by the secured creditor is not dependent on the realisation of security interest by a secured creditor. Thus the Tribunal in this regard has not erred in returning a finding that prayer of the appellant to pay the required dues under Section 53 of the IBC only after realisation of his security interest is not justified and legal.

34. Therefore, having regard to all the facts and circumstances of this case and keeping in view the various judgments passed by this Tribunal mentioned herein before it is evident that the appellant did not make any prayer before the Tribunal to extend time or to provide sufficient time to deposit the money as required under Section 53 of the IBC and has only requested the Tribunal to permit him to realise his security interest first and to further permit to deposit the dues under Section 53 of the IBC thereafter from the proceeds of such realisation and this prayer of the appellant in our considered opinion has been

rightly rejected by the Tribunal. The Judgment impugned before us is required to be tested on the basis of the prayers made before the Tribunal and reasons given by the Tribunal in order to arrive at a particular finding. Therefore, when no prayer for extension or exclusion of time has been made before Tribunal by the appellant, he may not be deemed to be an aggrieved person so far as this prayer is concerned. It is also to be recalled that non-deposition of dues as required under Section 53 of the IBC read with Regulation 21A (2) (a) of Insolvency Regulations within stipulated period has resulted in the automatic vesting of the assets in liquidation pool and the liquidator vide his email dated 08.09.2022 has only formally communicated it. Though the dispute before us has not been contested by Ld. Counsel for liquidator with tooth and nail but even thereafter in our considered opinion when no request to extend time or exclusion of time was prayed before the Tribunal by the appellant, the Tribunal was not obliged to grant it on its own. At the cost of repetition, it is stated that the appellant before tribunal has requested to permit him to realise the secured interest from specified properties at first and thereafter to deposit the dues as provided under Section 53 of the IBC, which have been duly communicated to the appellant by the Respondent/liquidator and after getting knowledge of these dues the appellant instead of making efforts to deposit it, chosen to challenge the decision of the liquidator and has also challenged the vires of Insolvency Regulation 21A. Thus, the intention of the appellant, before the tribunal was not of deposition of the dues.”

127. In light of the above, we hold that the Appellant, despite asserting its intention not to relinquish its security interest, failed to comply with the mandatory statutory requirements necessary to give effect to such intention. Its failure to initiate enforcement proceedings; failure to pay CIRP and liquidation costs within the prescribed period; failure to intimate realization value; and non-participation in the liquidation process collectively establish that the Appellant did not validly exercise its rights under Section 52.

128. Consequently, the secured assets stood vested in the liquidation estate by operation of law, and the Liquidator was fully justified in issuing

the e-auction sale notice dated 08.03.2024 and proceeding with the sale of the Corporate Debtor as a going concern.

129. In view of the findings in above paragraphs, we do not find any infirmity in the way the liquidation process has been carried out by the liquidator. The first issue therefore is decided in favour of Respondents.

130. We now take up the second issue relating to distribution of liquidation sale proceeds which has been agitated in the second appeal. It arises out of subsequent developments in the liquidation process, particularly the order dated 20.08.2024 directing issuance of the sale certificate in favour of the Successful Auction Purchaser. The grievance of the Appellant, in substance, is not confined to the issuance of the sale certificate alone, but extends to the manner in which the sale proceeds are to be distributed amongst the stakeholders. The question therefore, arises for consideration is whether such dispute can be adjudicated at this stage by this Tribunal, or whether it ought to be considered by the Adjudicating Authority in the first instance.

131. The Appellant has contended that the issuance of the sale certificate ought not to have been directed without first determining the correct manner of distribution of sale proceeds, particularly in view of its asserted status and its claim to a higher share. On the other hand, the Respondents, including the Liquidator, have submitted that the auction process has already attained finality, the Successful Auction Purchaser has deposited the entire sale consideration, and the issuance of the sale certificate was a necessary consequence of a concluded sale. It is further submitted that the issue of distribution of sale proceeds is already pending consideration before

the Adjudicating Authority, where a proposed distribution has been placed on record by way of affidavit dated 03.08.2024.

132. Upon a careful examination of the record, we find that the liquidation process has substantially progressed, and the Corporate Debtor has been sold as a going concern through a duly conducted e-auction. The Successful Auction Purchaser has deposited the entire consideration, and the issuance of the sale certificate pursuant to the order dated 20.08.2024 is only a consequential step towards completion of the sale. At the same time, it is equally evident that the question of distribution of sale proceeds has not yet attained finality and remains pending before the Adjudicating Authority.

133. We are of the view that the scheme of the Insolvency and Bankruptcy Code, 2016 clearly envisages that matters relating to determination of claims, classification of creditors, and distribution of proceeds under Section 53 are to be adjudicated by the Adjudicating Authority in the first instance.

134. Such determination necessarily involves examination of factual and legal issues, including the status of creditors, the nature and extent of their security interest, and their respective entitlements in the liquidation waterfall mechanism as provided in Section 53(1) of the Code. These are not matters which can be appropriately decided at the appellate stage without a prior determination by the Adjudicating Authority.

135. In the present case, the grievance of the Appellant is intrinsically linked to its entitlement in the distribution of sale proceeds. However, since

the issue of distribution is already pending adjudication before the Adjudicating Authority, we find that it would not be appropriate for us to undertake such determination at this stage. Further, in view of our findings in the First Appeal wherein the validity of the auction process and inclusion of assets in the liquidation estate has been found to be in order, and therefore, the only surviving dispute between the parties pertains to distribution of liquidation proceeds.

136. In these circumstances, while we do not find any infirmity in the issuance of the sale certificate, we deem it appropriate to remand the matter to the Adjudicating Authority for the limited purpose of adjudicating the issue of distribution of sale proceeds and the inter se rights of stakeholders. The Adjudicating Authority shall consider the claims of all parties, including the Appellant, in accordance with Section 53 of the Code, without being influenced by our observations.

137. The third appeal, being Company Appeal (AT) (Ins.) No. 893 of 2025, arises from the order dated 05.11.2024 passed by the Adjudicating Authority in IA No. 1387 of 2024, filed by the Successful Auction Purchaser whereby reliefs and protections under Section 32A of the Insolvency and Bankruptcy Code, 2016 were granted without hearing the Appellant or other Financial Creditors.

138. We note that the appeal has been filed with a delay of 171 days. At the outset, we find that the present appeal raises a threshold issue of limitation and maintainability, which goes to the root of the matter and must be decided prior to examining the merits of the case.

139. The Appellant has sought to justify the delay by submitting that the impugned order cannot be viewed in isolation, but forms part of a continuing chain of proceedings arising out of the liquidation of the Corporate Debtor, including the earlier orders dated 22.04.2024 and 20.08.2024, which are already under challenge in connected appeals. It is contended that the rights of the Appellant are directly impacted by the cumulative effect of these orders, and therefore, the present appeal is in continuation of its earlier challenges. The Appellant has further submitted that the consequences of the impugned order dated 05.11.2024 became fully evident only upon implementation of the sale and the subsequent steps taken by the Successful Auction Purchaser, including seeking waivers and concessions, which prompted the Appellant to take recourse to appellate remedy. It is also urged that the Appellant has been actively pursuing its remedies before the Adjudicating Authority as well as this Tribunal in related proceedings, and that the delay has occurred on account of bona fide prosecution of such remedies and the overlapping nature of issues involved, and not due to any deliberate or negligent conduct.

140. We have considered the explanation offered by the Appellant. However, under Section 61 of the Insolvency and Bankruptcy Code, an appeal is required to be filed within 30 days, extendable by a further period of 15 days if sufficient cause is shown. The statutory scheme thus prescribes a strict outer limit of 45 days, beyond which this Tribunal does not have jurisdiction to condone the delay. In the present case, the record indicates that the impugned order was passed on 05.11.2024, whereas the present appeal has

been filed on 24.05.2025, resulting in a delay of 171 days. This has been admitted by the Appellant.

141. The contention that the impugned order forms part of a continuing cause of action or that its consequences were realized subsequently cannot be accepted to extend the statutory limitation period. Each order passed by the Adjudicating Authority gives rise to an independent cause of action, and limitation is to be computed from the date of such order. The fact that earlier appeals have been filed does not suspend or enlarge the period of limitation prescribed under the Code. **Therefore, this delay of 171 days is beyond the powers of this tribunal, which can condone delay up to a maximum period of 45 days.**

142. We are, therefore, of the considered view that the present appeal is clearly barred by limitation and is not maintainable. **Accordingly, the third appeal is dismissed as being barred by limitation and not maintainable.**

143. **In view of the findings above, we dispose of these three appeals in the following manner:**

- i. **The First Appeal (Company Appeal (AT) (Ins.) No. 1019 of 2024) stands dismissed.**
- ii. **The Second Appeal (Company Appeal (AT) (Ins.) No. 1657 of 2024) is disposed off with direction to Ld. Adjudicating Authority to decide the distribution of liquidation sale proceeds in accordance with Section 53(1) of the Code within a period of 4 weeks.**

- iii. The Third Appeal (Company Appeal (AT) (Ins.) No. 893 of 2025) is not maintainable and dismissed accordingly. There shall be no order as to costs. Pending IA's, if any, are closed.

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Indevar Pandey]
Member (Technical)**

Place: New Delhi

Harleen/
Pragya (LRA)