NEUTRAL CITATION

2026:GUJHC:36892-DB

Reserved On : 17/04/2026
Pronounced On : 19/06/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/O.J.APPEAL NO. 6 of 2023

In
R/OFFICIAL LIQUDATOR REPORT/136/2019
In
R/OFFICIAL LIQUDATOR REPORT/41/2019
In
R/COMPANY PETITION/97/1995

With
R/O.J.APPEAL NO. 9 of 2024
In
R/OFFICIAL LIQUDATOR REPORT NO. 136 of 2019
With
R/CROSS OBJECTION NO. 4 of 2024
In
R/O.J.APPEAL NO. 6 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR.JUSTICE L. S. PIRZADA

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Approved for Reporting	Yes	No
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MANAGER, KOTAK MAHINDRA BANK LTD,
Versus
OL OF M/S. ESSEN COMPUTERS LTD. & ORS.

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Appearance:
R/O.J.APPEAL NO. 6 of 2023
MR R S SANJANWALA, SENIOR ADVOCATE WITH MR TIRTH NAYAK(8563) for the Appellant(s) No. 1
MR ABHIJIT P JOSHI(1330) for the Opponent(s) No. 1
MR SN SOPARKAR, SENIOR ADVOCATE WITH MR MASOOM K

SHAH(6516) WITH MS PRIYANSHI TRIVEDI for the Opponent(s) No. 2,3

R/O.J.APPEAL NO. 9 of 2024
MR SN SOPARKAR, SENIOR ADVOCATE WITH MR MASOOM K SHAH WITH MS PRIYANSHI TRIVEDI for the Appellant(s) No. 1
MR ABHIJIT P JOSHI(1330) for the Opponent(s) No. 1
MR R S SANJANWAL WITH MR TIRTH NAYAK for the Opponent(s) No. 3

R/CROSS OBJECTION NO. 4 of 2024
MR SN SOPARKAR, SENIOR ADVOCATE WITH MR MASOOM K SHAH WITH MS PRIYANSHI TRIVEDI for the Cross Objectors No. 1,2
MR ABHIJIT P JOSHI(1330) for the Opponent(s) No. 1
MR R S SANJANWAL WITH MR TIRTH NAYAK for the Opponent(s) No. 2
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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR.JUSTICE L. S. PIRZADA

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Advocate Mr.R.S. Sanjanwala assisted by learned advocate Mr.Tirth Nayak appearing for the appellant, learned advocate Mr.Abhijit P. Joshi appearing for the respondent no.1 and learned Senior Advocate Mr.S.N. Soparkar assisted by learned advocate Mr.Masoom K. Shah and learned advocate Ms.Priyanshi Trivedi appearing for the respondent nos.2 and 3 in

O.J. Appeal No.6 of 2023.

2. Heard learned Senior Advocate Mr.S.N. Soparkar assisted by learned advocate Mr.Masoom K. Shah and learned advocate Ms.Priyanshi Trivedi appearing for the appellant, learned advocate Mr.Abhijit P. Joshi appearing for the respondent no.1 and learned Senior Advocate Mr.R.S. Sanjanwala assisted by learned advocate Mr.Tirth Nayak for respondent no.3 in O.J. Appeal No.9 of 2024.

3. Heard learned Senior Advocate Mr.S.N. Soparkar assisted by learned advocate Mr.Masoom K. Shah and learned advocate Ms.Priyanshi Trivedi appearing for the cross objectors, learned advocate Mr.Abhijit P. Joshi appearing for the respondent no.1 and learned Senior Advocate Mr.R.S. Sanjanwala assisted by learned advocate Mr.Tirth Nayak

for respondent no.2 in Cross Objection No.4 of 2024.

4. For the sake of convenience, the appellants and the opponents as well as cross objectors are being referred to by their individual names reflected in the cause title.

Facts

5. O.J. Appeal No.6 of 2023 is preferred by Kotak Mahindra Bank Ltd. being aggrieved by order dated 11.04.2023 passed by learned Company Judge in Official Liquidator Report No.136 of 2019 (here-in-after referred to as "OLR").

6. O.J. Appeal No.9 of 2024 in O.J.M.C.A. No.1 of 2023 in OLR No. 136 of 2019 is filed by Essen Finance & Investments Limited and its Director being aggrieved by order dated 28.06.2024 passed in Misc. Civil Application

(For Modification of Order) No. 1 of 2023 in OLR No. 136 of 2019 in OLR No. 41 of 2019.

7. Cross Objections No.4 of 2024 in O.J. Appeal No.6 of 2023 is preferred by Essen Finance and Investments Ltd. and its Director Mr. Apurva J. Parekh.

8. OLR No.136 of 2019 was filed by the Official Liquidator for disbursement of the amount realised on sale of assets and properties of the company in liquidation M/s. Essen Computers Ltd. between secured and unsecured creditors of the company in liquidation.

9. Company Petition No.97 of 1995 was filed for the liquidation of M/s. Essen Computers Limited (Company in Liquidation). By order dated 17.04.1997, the said company was ordered to be wound up as per the provisions of the Companies Act, 1956 and Official

Liquidator was appointed to take charge of the assets and properties of the company and to distribute its assets in accordance with law.

10. The appellant Kotak Mahindra Bank Limited became a secured creditor of the company in Liquidation on 29.09.2004 pursuant to assignment of debt by ICICI Bank Ltd. by execution of Deed of Assignment.

11. During the pendency of the proceedings before this Court, the Debts Recovery Tribunal passed judgment and decree dated 31.08.2007 in Original Application No.122 of 2001 filed by ICICI Bank Ltd. declaring Kotak Mahindra Bank Ltd. as a secured creditor of the company in Liquidation and the Official Liquidator was directed to pay a sum of Rs.9,82,16,530/- together with interest thereon at the rate of 6% per annum

from 12.03.2001 till realisation.

12. There are Deeds of Assignment dated 02.12.2006 between BOI and respondent no.2-Essen Finance and Investments Ltd. and dated 24.02.2007 between SBI and Essen Finance Ltd. The O.A. No. 47 and No.124 filed before Debt recovery tribunal were settled on 12.01.2007 between BOI, SBI vs Essen Computers Ltd.(in Liquidation) The GIIC has issued a communicated dated 25.02.2010 showing Essen Peripherals Limited has settled the loan. Similar communications have been issued by the GSFC showing Essen Peripherals and Essen Fabrication & Engg. have settled the loan. It is pertinent to note that all the communications are addressed to the borrower company and do not indicate the name of respondent no.3-Apurva Parekh. Both - Essen Peripherals and Essen Fabrication amalgamated with Essen Computers (in Liquidation) in

1992. Account in both GIIC and GSFC has been settled in 2010/2011 after the date of liquidation i.e. 17.04.1997. The Bank of India has entered with the Deed of Assignments dated 02.12.2006, 9.12.2006 and 14.2.2007 with SBI with respondent no.2-Essen Finance. The Deeds of Assignment are signed by respondent no.3 on behalf of Assignee (respondent no.2). The respondent no.3 being an assignee of company in liquidation, having settled all the dues with BOI and SBI in OTS is claiming to be a secured creditor.

13. Respondent no.3 Mr. Apurva J. Parekh Director of M/s. Essen Computers Limited (in Liquidation) had proposed a scheme of compromise and arrangement by preferring Company Petition No.111 of 2001 before this Court. By order dated 19.01.2005 the said scheme was rejected by this Court by imposing

cost. Being aggrieved Mr. Apurva J. Parekh filed O.J. Appeal No.10 of 2005. The Division Bench of this Court by judgment and order dated 09.10.2012 passed in O.J. Appeal No. 10 of 2005 remitted the matter back to the learned Company Judge to reconsider the same afresh. Mr. Apurva J. Parekh thereafter withdrew the Company Petition No.111 of 2001 on 09.04.2018.

14. Learned Company Judge by order dated 28.01.2019 passed in OLR No.118 of 2018 confirmed the sale of assets and properties of company in liquidation for a consideration of Rs.12 crores in favour of Gujarat State Cooperative Marketing Federation Ltd.

15. Official Liquidator of M/s. Essen Computers Ltd. (In liquidation) thereafter filed OLR No.41 of 2019 for inviting claims of all types of creditors under sections 529,

529A and 530 of the Companies Act, 1956.

16. By orders dated 07.03.2019 and 20.03.2019 passed by learned Company Judge, Official Liquidator was permitted to invite claims from the creditors of the company in liquidation by publishing advertisement in newspaper and also permitted the Official Liquidator to engage Chartered Accountants to verify such claims. The Official Liquidator published an advertisement in newspapers “Gujarat Samachar” and “Indian Express” on 29.03.2019.

17. In order to verify the claims from the creditors of the company in liquidation received pursuant to the advertisement, the Official Liquidator appointed M/s. Rajni Shah & Associates, Chartered Accountants to verify such claims.

18. M/s. Rajni Shah & Associates, Chartered Accountants submitted report dated 07.08.2019. However, the Official Liquidator found certain observations which required re-look in the report and therefore, called for explanation from the Chartered Accountant by letter dated 06.09.2019.

19. Chartered Accountant by letter dated 10.09.2019 explained their comments about the discrepancies. The Official Liquidator thereafter sent a report of the Chartered Accountant to the secured creditors and the Sale Committee members of the company in liquidation. On receipt of reply from Mr. Apurva J. Parekh and Essen Finance & Investments Limited accepting the report of the Chartered Accountant, Official Liquidator preferred OLR No.136 of 2019 to take on record the report of the Chartered Accountant and to disburse the amount as per the said

report amongst secured and unsecured creditors of the company in liquidation.

20. It appears that Kotak Mahindra Bank Ltd. filed its affidavit in reply in OLR No.136 of 2019 to dismiss the OLR on the ground that the Chartered Accountant's report had not considered several issues.

21. Essen Finance & Investments Limited and Mr. Apurva J. Parekh, respondent nos. 2 and 3 have also filed their affidavit in reply in OLR No.136/2019 contending inter-alia that the O.A. filed before the Debts Recovery Tribunal was already settled between the parties in view of full and final settlement of the suit claim and therefore, Kotak Mahindra Bank Ltd. cannot be considered as a secured creditor.

22. During the pendency of the proceedings

of OLR No.136/2019, learned Company Judge directed the Official Liquidator to obtain a fresh report from Chartered Accountant.

23. Accordingly, the Official Liquidator appointed M/s. Sheth and Shah, Chartered Accountants to submit the report. M/s. Sheth and Shah, Chartered Accountants submitted report dated 22.02.2022 wherein claims of secured and unsecured creditors are earmarked as per the following ratio:

SECURED CLAIM AND RATIO

Sr. No.	Name of Creditors	Secured Claim	Ratio (%) of Total Claim)
1	Mr.Apurva Parekh	81,45,000	**53.08**
2.	Kotak Mahindra Bank	72,00,000	**46.92**
Total		**1,53,45,000**	**100.00**

UNSECURED CLAIM AND RATIO

Sr. No.	Name of Creditors	Interest on Secured Portion	**Unsecured Claim** as per "Exhibit B" of C.A. Report	**Total**	Ratio (%) of Total Claim
1	Mr.Apurva Parekh	43,32,577	63,93,842	1,07,26,419	**1.61**
2.	Essen Finance and Investment Ltd.	0.00	54,87,82,695	54,87,82,695	**82.42**
3	Kotak Mahindra	1,01,66,795	4,96,75,215	5,98,42,010	**8.99**

	Bank				
4	UTI	0.00	2,41,97,943	2,41,97,943	**3.63**
5	LIC	0.00	2,23,02,414	2,23,02,414	**3.35**
Total		**1,44,99,372**	**65,13,52,109**	**66,58,51,481**	**100.00**

24. Kotak Mahindra Bank Ltd. filed objections to the aforesaid report of the Chartered Accountant regarding ratio of disbursement apropos claim of Mr. Apurva J. Parekh and Essen Finance & Investments Limited. The learned Company Judge after considering the objections of Kotak Mahindra Bank Ltd. passed the impugned order dated 11.04.2023 directing the Official Liquidator to apprise the Chartered Accountant to prepare a fresh report in light of the observations made in the order. Learned Company Judge has recorded the conclusion as under:

> "CONCLUSION:
>
> The following facts are established:
>
> **19.** The respondent No.1-Apurva Parekh is the Director of Company in liquidation (Essen Computers Ltd.)

and respondent no.2-Essen Finance Ltd. It is the case that Apurva Parekh stood as a guarantor of Company in Liquidation (Essen Computers), and he is claiming amount from O.L. as subrogation as a secured creditor.

20. The DRT vide order dated 31.08.2007 passed in O.A. No.122 of 2001 has directed the Essen Computers Limited (company in liquidation) to pay the total amount of Rs 9,82,16,530.00 with simple interest at the rate of 6% from 12.03.2001 until realization to Kotak Bank. Instead, the secured claim is only considered as Rs.72 lacs by Chartered Accountant. There are Deeds of Assignment dated 02.12.2006 between BOI and Essen Finance and Investments Ltd. and dated 24.02.2007 between SBI and Essen Finance Ltd. The O.A. No. 47 and No.124 were settled on 12.01.2007 between BOI, SBI vs Essen Computers Ltd. The GIIC has issued a communicated dated 25.02.2010 showing Essen Peripherals Limited has settled the loan. Similar communications have been issued by the GSFC showing Essen Peripherals and Essen Fabrication & Engg. have settled the loan. It is pertinent to note that all the communications referred hereinabove are addressed to the borrower and do not indicate the name of respondent no.1-Apurva Parekh. Both - Essen Peripherals and Essen Fabrication amalgamated with Essen Computers in 1992. Account in

both GIIC and GSFC has been settled in 2010/2011 after the date of liquidation i.e. 17.04.1997.

21. The Bank of India has entered with the Deed of Assignments dated 02.12.2006, 9.12.2006 and SBI 14.2.2007 with SBI with respondent no.2- Essen Finance. The Deeds of Assignment are signed by respondent no.1 on behalf of Assignee (respondent no.2). The respondent no.2, being an assignee of company in liquidation, having settled all the dues with BOI and SBI in OTS is claiming to be a secured creditor.

The claim of respondent no.1-Apurva J. Parekh, is incorporated as under:-

Sr. No.	Particulars	Amount (In Rs.)	CA Report (Pg. No.)	Proof (Pg. No.)
1.	Amount paid to GIIC (Secured)	70,45,000	301-303	168A
2.	Amount paid to GSFC (Secured)	11,00,000	303-305	405-407
3.	Amount paid to GSFC (Unsecured)	2,18,842	303-305	408-412
4.	Amount paid to ICICI Bank (Unsecured)	46,75,000	305-306	168M
5.	Amount paid to Kotak Bank (Unsecured)	15,00,000	306-308	168N-P

The claim of respondent no.2-Essen Finance & Investments Ltd., is incorporated as under:-

Sr. No.	**Particulars**	**Amount (In Rs.)**	**CA Report (Pg. No.)**	**Proof (Pg. No.)**
1.	Assignment by Bank of India	43,13,14,937	309-321	183-193
2.	Assignment by State Bank of India	9,81,96,932	309-321	216-228
3.	Assignment by Bank of India Mutual Fund	65,00,000	309-321	194-203
4.	Amount paid to OL	12,52,796	321	---
5.	Loan to ECL	1,15,18,630	322	229

The Chartered Accountant has earmarked the secured and unsecured claims as per the following ratio:

SECURED CLAIM AND RATIO

Sr. No.	Name of Creditors	Secured Claim	Ratio (%) of Total Claim)
1	Mr.Apurva Parekh	81,45,000	**53.08**
2.	Kotak Mahindra Bank	72,00,000	**46.92**
Total		**1,53,45,000**	**100.00**

UNSECURED CLAIM AND RATIO

Sr. No.	Name of Creditors	Interest on Secured Portion	**Unsecured Claim** as per "Exhibit B" of C.A. Report	**Total**	Ratio (%) of Total Claim
1	Mr.Apurva Parekh	43,32,577	63,93,842	1,07,26,419	**1.61**
2.	Essen Finance and Investment Ltd.	0.00	54,87,82,695	54,87,82,695	**82.42**
3	Kotak Mahindra Bank	1,01,66,795	4,96,75,215	5,98,42,010	**8.99**

4	UTI	0.00	2,41,97,943	2,41,97,943	**3.63**
5	LIC	0.00	2,23,02,414	2,23,02,414	**3.35**
Total		**1,44,99,372**	**65,13,52,109**	**66,58,51,481**	**100.00**

22. The Chartered Accountant has treated the amount paid to GIIC of Rs.70,4500 and to GSFC Rs.11,00,000 and Rs.2,18,842 considering the respondent no.1- Apporva Parekh as secured creditor as per his by treating the debt as a secured debt on the basis of the letters of settlement issued by GIIC and GSFC intimating settlement of loans given to Essen Peripherals and Essen Fabrication & Engg. Co. Pvt. Limited. The said companies were subsequently amalgamated with Essen Computers. As per the report of Chartered Accountant no documents are produced by the respondent no.1- Mr.Parekh, except the settlement letters dated 25.02.2010 and 05.11.2011, 08.11.2011. The settlement letters do not indicate that the loan has been paid by respondent no.1 or the Companies Essen Peripherals and Essen Fabrication & Engg. Co. Pvt. Limited. The Chartered Accountant had demanded various documents as per their communication dated 20.01.2022 (Page 270) from respondent no.1 with regard to the payment made by him to ICICI, GSFC and GIIC as a guarantor. The Chartered Accountant has observed thus:

"Remarks/ Observations

"There is no evidence available on record as the amount of Rs.70,45,000.00 actually being paid by Mr.Apurva Parekh to GIIC. However, considering the fact that GIIC has issued the settlement letter dated 25.02.2010 for settled accounts and subsequent withdrawn the suit filed by it, it has been presumed that the payment ought to have been made by Mr.Parekh in settlement of debts".

23. After making the aforesaid remarks, the debt of Rs.70,45,000.00 is treated as secured as per section 529 of the Companies Act. Similarly for the amount of Rs.11,00,000/- respondent no.1 has not produced any supporting documents showing that the respondent no.1 has paid the amount of loan obtained from GSFC by Essen Peripherals. The Chartered Accountant has presumed that such loans are paid by the respondent no.1 on the basis of the communications issued by GSFC and GIIC about the satisfaction of the loan by the Company. It is interesting to note that for the amount of Rs.70,45,000.00, the Chartered Accountant has treated the same as secured in view of the settlement letter dated 25.02.2010 by GIIC, whereas the amount of Rs.2,18,842-00 has been treated as unsecured despite similar letter dated 05.11.2011 issued by the GSFC about settlement. In my considered

opinion, the entire amount as mentioned hereinabove cannot be treated as secured under the provision of section 529 of the Companies Act, on presumption and in absence of any cogent and reliable evidence showing that actually the aforesaid amount of loan is paid by the respondent no.1.

24. At this stage, I may refer to the decision of the Apex Court in the case of Jitendra Nath Singh vs. Official Liquidator, 2013 (1) S.C.C. 462 has held thus:

> “The Companies Act does not define a "creditor" and a "secured creditor" and hence, we have to refer to the Insolvency Act for the definitions of these two words. Section 2(1)(a) and Section 2(1)(e) of the Insolvency Act define the words creditor and unsecured creditor and are extracted hereinbelow:
>
> "2(1)(a) "creditor" includes a decree-holder, "debt" includes a judgment- debt, and "debtor" includes a judgment-debtor."
>
> "2(1)(e) "secured creditor" means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor."

25. It will be clear from the

definition of “creditor” in Section 2(1)(a) of the Insolvency Act that it is an inclusive and not an exhaustive definition, whereas it will be clear from the definition of “secured creditor” in Section 2(1)(e) of the Insolvency Act that it is an exhaustive definition and that a secured creditor means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor. The result is that the expression “secured creditor” in Section 529(1)(c) would mean a person who holds a mortgage, charge or lien on the property of the company or any part thereof as a security for a debt due to him from the company. Where, therefore, a creditor, such as the bank or the financial institution in this case, does not hold a mortgage, charge or lien on the property of the company or any part thereof as a security for a debt due to it from the company, it is not a secured creditor for the purposes of Sections 529 and 529A of the Companies Act.

26. Thus, in absence of any definition of “secured creditor” under the Companies Act, 1956, the Apex Court has placed reliance on the definition of “secured creditor” as defined under section 2(1)(e) of the Insolvency Act. It is held that the expression “secured creditor” in Section 529(1)(c) would mean a person who holds a mortgage, charge

or lien on the property of the company or any part thereof as a security for a debt due to him from the company. Thus, the Respondent no.1 has to prove by showing documentary evidence that by paying the loan amount, he has secured the entire debt of the company in liquidation. There is no documentary evidence available which suggests that the in fact the entire debt has been cleared by the respondent no.1. In the present case, the respondent no.1, while placing reliance on section 140 of the Contract Act is also claiming the amount as a subrogee on the premise that he has paid the amount in the capacity of guarantor of the companies - Essen Peripherals and Essen Fabrication & Engg. Co. Pvt Limited to whom the GIIC and GSFC had lend the loans. Section 140 of the Contract Act reads as under:

> "SECTION 140 : Rights of surety on payment or performance
>
> Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor."

27. Section 140 of the Indian Contract Act deals with rights of surety on payment or performance.

Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor. One of the essential rights available to the guarantor to make good their loss is the right to subrogation. All rights that an undischarged creditor held prior to settlement of his claim should, in keeping with section 140 of the Contract Act, transfer to the guarantor under normal circumstances. If the payment is made by the guarantor in settlement of a secured creditor, as per Section 140 he should be invested with all the rights of a secured creditor and be treated as such when liquidation commences. Section 128 of the Indian Contract Act says that, the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. The Supreme Court in case of Kaluram(supra) in context of provision of section 140 and 141 of the Contract Act has observed thus:

> " 11 Kaluram by executing the surety bond had undertaken to discharge the liability arising out of any act, omission, negligence or default of the forest contractor. The surety Kaluram contends that because the

State lost or parted with the security he stood discharged. By sec. 140 of the Indian Contract Act, 1872 , where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor; and by sec. 141 it is provided :

> "A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security."

The State had as already observed, a first charge over the goods. The State was also entitled to prevent the goods from being removed without payment of the instalments due. The expression "security" in sec. 141 is not used in any technical sense; it includes all rights which the creditor had against the property at the date of the contract. The surety is entitled on payment of the debt or performance of all that he is

liable for, to the benefits of the rights of the creditors against the principal debtor which arise out of the transaction which gives rise to the right or liability: he is therefore on payment of the amount due by the principal debtor entitled to be put in the same position in which the creditor stood in relation to the principal debtor. If the creditor has lost or has parted with security without the consent of the surety, the latter is, by the provision contained in sec. 141, discharged to the extent of the value of the security lost or parted with."

28. Thus, as per the provisions of Section 140 read with section 128 of the Indian Contract Act, 1872, where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor. In such circumstances, the Respondent no.1 cannot be deprived of remedy to recover the amount he paid as part of his obligation under the agreement of guarantee under the Indian Contract Act, from the Corporate Debtor. Thus, the respondent no.1 can seek repayment as a subrogee in exercise of his right under Section 140 of the Contract Act however, to the extent he has paid the amount as a

guarantor. The Respondent no.1 has to show the evidence of payment of the debt, and if he shows that he has cleared the entire debt then he has to be considered as a secured creditor. The reliance placed by the Respondent no.3 on the judgment of High Court of Bombay in case of M/a Trimbak Ispat Private Ltd.(supra) will not apply to the facts of the present case since the issue raised therein is not examined in light of the provision of section 140 of the Contract Act.

29. So far the claim of respondent no.2-Essen Finance and Investments Limited is concerned the same are as under:

Bank of India : Rs.43,13,14,937
State Bank of India: Rs.9,81,96,932
Indian Mutual Fund: Rs.65,00,000.00
OL : 12,52,796
ECL: 1,15,18,630:00

30. The respondent no.3 has primarily raised objection towards the claim of Bank of India and State Bank of India. The claim is based on the Deeds of Assignment dated 02.12.2006 (BOI), 09.12.2006 (BOI) and 14.02.2007 (SBI) after the order of liquidation has been passed. The aforesaid Deeds of Assignment are entered with the sister concern of the company in liquidation i.e. respondent no.2. As per the Deeds of Assignment all debts of the company in liquidation has been satisfied by the respondent no.2. It is pertinent to note that the BOI and SBI had

filed O.A No.47 of 1997 and No.124 of 1997 for recovery of dues before the Debt Recovery Tribunal against ECL, (Company in liquidation), which were disposed of in view of full and final settlement in the year 2007. The Chartered Accountant, on the basis of the Deeds of Assignment deeds has considered an amount of Rs.54,87,82,695.00 as unsecured. The respondent-Kotak Bank cannot question the Deeds of Assignment at this stage of disbursal of the amounts, hence the contention in this regard is rejected. The respondent no.3 has placed reliance on the judgment of the Division Bench in the case of Suzuki Parasmapuria Suitings Pvt.Ltd (supra), which is confirmed by the Apex Court in Suzuki Parasrampuria Suitings Private Limited vs. Official Liquidator of Mahendra Petrochemicals Limited, (2018) 10 S.C.C. 707. The Division Bench has passed the judgment in the O.J. Appeal preferred under section 438 of the Companies Act, 1956, wherein the appellant-Company had sought substitution as a transferee of an actionable claim. The facts recorded by the Apex Court in its judgment suggest that while the company petition for winding up was pending, the company preferred for rehabilitation to the BIFR, and during pendency of the same, the Company entered into unregistered MoU with the sister concern of the appellant SUZUKI Parsampuria Suitings Ltd. for leasing out its

properties for repayment of debt, and such MoU was not brought to the notice of the Company Court till the winding up order was passed. Thus, the law enunciated by the Division Bench and the Apex Court will not apply to the facts of the present proceedings. The respondent no.3 has alleged fraud being committed by the respondent nos.1 and 2 in order to lay claim. Merely because the respondent no.2 has not continued with the recovery proceedings after entering into the Deeds of Assignment before the DRT will not ipso facto lead to the conclusion that such deeds are entered to commit fraud. The respondent no.3 has not disputed that amount payable to the Bank of India and SBI. The wisdom of the Banks in entering the assignment deeds cannot be questioned at this stage since the Banks have themselves thought it fit to enter into assignment deeds looking to the financial health of the Company in liquidation and its capacity to recover the money. It is also pertinent to note that no action is taken by any of the authorities against the respondent no.1 that he has siphoned the money or has committed any fraud or illegality in managing the Company. This Court at the stage of deciding the disbursal of the amount as per the O.L. report cannot delve into such aspects.

31. The ICICI bank has assigned the debt to Kotak Mahindra Bank-

Respondent no.3 vide assignment deed dated 29.09.2004. The Chartered Accountant has precisely considered the amount of Rs.72,00,000/- as secured as the charged was registered before the RoC for foreign currency loan in Japanese Yen and Dollars, hence the objections raised by the respondent nos.1 and 2 in this regard do not merit acceptance. However, with regard to the claim of rate of conversion by the respondent no.3, this Court cannot delve into the said aspect and it is for the Chartered Accountant to examine the same, since it is for the respondent no.3 to satisfy the Chartered Accountant with documentary proof of such rate of conversion. The Chartered Accountant has also considered the amount of Rs.4,96,75,215 (Rs.5,11,75, 215 (-) Rs.15,00,000.00) as unsecured. It is also admitted by them that the Bank has received an amount of Rs.15,00,000/- paid by the guarantor. In the affidavit of proof dated 03.05.2019 in Company Petition No.97 of 1995, the respondent no.3 has clarified the aforesaid order and the amount. The respondent no.3-Kotak Mahendra Bank has alleged that the Chartered Accountant has ignored the order dated 31.08.2007 passed by the DRT in O.A No.122 of 2001, wherein and whereby the respondent no.1 Mr. Parekh was directed to pay an amount of Rs.9,18,16530.00 to it, after considering respondent no.3 as a secured creditor. The said

submission runs contrary to the report of Chartered Accountant. The Chartered Accountant though has referred in the list of documents, has finally considered the aforementioned amount as secured. The claim of the respondent no.3 as on the date of liquidation i.e. 17.04.1997 is Rs.5,83,75,215.00. The DRT has directed the respondent no.1 to pay an amount of Rs.9,82,16,530/- together with further interest at the rate of 6% p.a from 12.03.2001 till payment. The Chartered Accountant has absolutely ignored the effect of the order of the DRT in his report. Thus, the same is also required to be incorporated in the report while deciding the claim. The Respondent no.3 has also claimed interest as mentioned herein above, however, the same is not required to be considered at this stage of ad hoc payment of the secured debt.

32. Thus, the Official liquidator is directed to apprise the Chartered Accountant for preparing a fresh report in light of the afore-noted observations. Such report shall be prepared within a period of three months. The Official Liquidator shall file a fresh report after receipt of report from the Chartered Accountant."

25. Being aggrieved by the aforesaid order, Kotak Mahindra Bank Ltd. preferred O.J.

Appeal No. 6 of 2023.

26. M/s. Essen Finance & Investments Limited preferred Misc. Civil Application (For Modification of Order) No. 1 of 2023 in OLR No. 136 of 2019 with a prayer to partially modify the judgment dated 11.04.2023 to consider the applicant M/s. Essen Finance & Investments Limited also as secured creditor on the basis of charges registered with ROC and to direct the Chartered Accountant to consider the debt of both the creditors in uniform manner i.e. either on the basis of charges registered with the ROC or on the basis of the value of the securities held by the creditors.

27. Learned Company Judge by order dated 28.06.2024 referred to and relied upon para no.31 of judgment dated 11.04.2023 by referring to the order of Debts Recovery

Tribunal in O.A. No. 122 of 2001 whereby Kotak Mahindra Bank Ltd. was held to be a secured creditor and rejected the prayer of the applicant to consider Kotak Mahindra Bank Ltd. as secured creditor to the extent of Rs. 7,00,000/- which is the value of the security on the basis of hypothecation of three machines and for the rest of the amount as an unsecured creditor.

28. Being aggrieved by order dated 28.06.2024, Essen Finance & Investments Limited preferred O.J. Appeal No.9 of 2024.

29. Essen Finance & Investments Limited as well as Mr. Apurva J. Parekh have also preferred Cross Objection raising the issue of considering the claim of Kotak Mahindra Bank Ltd. to the extent of value of security held by it namely, Rs. 7,00,000/- for hypothecation of three machines.

30. Learned Company Judge has considered the objections raised by the Kotak Mahindra Bank Ltd. against the report of the Chartered Accountant which provides for ratio of 53.08:46.92 to be apportioned to Mr. Apurva J. Parekh and Kotak Mahindra Bank and 82.42% to Essence Finance and Investment Ltd. and only 8.99% to Kotak Mahindra Bank Ltd. It was contended by Kotak Mahindra Bank before the learned Company Judge that so far as claim of Mr. Apurva J. Parekh is concerned, the amount mentioned in his affidavit were without any proof and does not show that the said amount was paid for settlement of dues of the company in liquidation.

31. It was also contended by Kotak Mahindra Bank Ltd. that so far as claim of Essence Finance and Investments Ltd. is concerned, it could not have been considered as secured

claim since the said company is the sister concern of the company in liquidation and could not have been the assignee of the debt of the Bank of India and State Bank of India for claim of Rs.52,95,11,869/-.

32. It was contended that as per the order passed by the Debts Recovery Tribunal in the judgment dated 31.08.2007 in O.A. No.122 of 2002, Kotak Mahindra Bank Ltd. is entitled to Rs.9,82,16,530/- along with simple interest at the rate of 6% whereas the Chartered Accountant has considered the claim of Kotak Mahindra Bank Ltd. for Rs.5,83,75,215/- as on date of liquidation i.e. on 17.04.1997.

Submissions of learned Senior Advocate Mr. Sanjanwala with learned advocate Mr. Tirth Nayak:

33. Learned Senior Advocate Mr. Sanjanwala for Kotak Mahindra Bank Ltd. submitted that Bank of India and State Bank of India could

not have assigned its debt to the Director of the company in Liquidation and the same is not required to be considered as secured creditors since both the Essence Finance and Investment Ltd. and Mr. Apurva Parekh are related to the company in liquidation as sister concern and owners respectively.

34. Learned Senior Advocate Mr. Sanjanwala invited the attention of the Court to the Director's report of Essen Finance & Investments Limited to point out that Mr. Apurva J. Parekh was holding more than 99% of the shares of the said company. It was therefore, submitted that the Deed of Assignment executed by Essence Finance and Investment Ltd. and Mr. Apurva Parekh with State Bank of India and Bank of India is nothing but a malicious and fraudulent conduct. It was submitted that both Essence Finance and Investment Ltd. and Mr. Apurva

Parekh have conspired and connived to settle the debt with the creditors of the company in liquidation and now purportedly claim that such debts have been subrogated/assigned to them and hence claim to be secured creditor of the company in liquidation.

35. Learned Senior Advocate Mr. Sanjanwala therefore, submitted that the Director of the company in liquidation either himself or through sister company of the company in liquidation which is fully controlled by the Director himself cannot pay minuscule portion of the debt to the creditors and thereby take over entire debt and thereafter raise the claim out of sale consideration from the sale of assets of the same borrower company as secured creditor. It was therefore, submitted that both Essence Finance and Investment Ltd. and Mr. Apurva Parekh have conspired and connived to defraud the secured creditors of

the company in liquidation and has approached this Court seeking a stamp of validity to such fraudulent transaction. It was therefore, submitted that learned Company Judge ought to have considered the *modus operandi* of Essence Finance and Investment Ltd. and Mr. Apurva Parekh and therefore, there is no subrogation in favour of Essence Finance and Investment Ltd. in absence of any documentary evidence on record to suggest that Essence Finance and Investment Ltd. and Mr. Apporva Parekh had paid dues of the company in liquidation.

36. It was submitted that Essen Finance & Investments Limited and Mr. Apporva Parekh has not placed on record any document to show that amount of other secured creditors namely, GIIC and GSFC have been paid by it but letters placed on record are addressed to companies Essen Peripherals and Essen

Fabrication and Engineering Co. Pvt. Ltd. who were the borrowers which later merged with the company in liquidation.

37. It was therefore, submitted that so far as Essence Finance and Investment Ltd. is concerned, there is no agreement to confirm that the rights of GIIC, GSFC and ICICI bank have been subrogated in favour of Essence Finance and Investment Ltd.

38. It was further submitted that learned Company Judge on one hand has held at para nos.23 and 26 of the impugned judgment that Essence Finance and Investment Ltd. has failed to substantiate its claim as subrogee, however in para no. 28 the learned Company Judge has held that Essence Finance and Investment Ltd. is entitled to produce documentary evidence to establish its claim under section 140 of the Indian Contract Act.

It was therefore, submitted that the learned Company Judge has failed to appreciate that section 140 of the Indian Contract Act would not be applicable in facts of the case in absence of any written agreement and as such, Essence Finance and Investment Ltd. ought to have been considered as an unsecured creditor.

39. It was further submitted that Essence Finance and Investment Ltd. is a company promoted by the guarantors i.e. Mr. Apurva Parekh - Director of the company in liquidation and there is no adjudicated claim in favour of Essence Finance and Investment Ltd. or Mr. Apurva Parekh and so far as Kotak Mahindra Bank Ltd. is concerned, there is decree in its favour passed by the Debts Recovery Tribunal.

40. It was further submitted that the

learned Company Judge ought to have considered that when a guarantor steps into the shoes of secured creditors by paying the mortgage, the provisions of section 92 of the Transfer of Property Act, 1881 would be applicable and in order to classify the guarantor as secured creditor there has to be a registered document executed by the mortgagor and the mortgage is required to be redeemed in full. It was submitted that there is no registered deed or document executed by ICICI bank in favour of Mr. Apurva Parekh - Director in capacity of guarantor for discharging its dues.

41. It was submitted that the company in liquidation was ordered to be wound up in the year 1997 whereas Mr. Apurva Parekh has entered into a Deed of Assignment in the year 2006 in the capacity of guarantor and Mr. Apurva Parekh cannot be treated as secured

creditor on principle of subrogation for distribution of sale proceeds under section 529 of the Companies Act, 1956 as payment to other secured creditors are yet to be made. It was therefore, submitted that the learned Company Judge ought to have held that other secured creditors would have priority in payment over subrogee claim in exercise of right under section 140 of the Indian Contract Act.

42. It was submitted that the decision of Bombay High Court in case of **Sterling Trade vs. Trimbak Ispat Private Limited** reported in 2018 S.C.C. Online 12339 would be applicable in facts of the case wherein it is held that a guarantor making payment to settle the accounts of the borrower will be entitled to only the amount paid and will be treated as unsecured creditor.

43. It was further submitted that learned Company Judge has erred in law in holding that Kotak Mahindra Bank Ltd. could not have questioned the Deeds of Assignment executed by Bank of India, State Bank of India and Bank of India Mutual Fund in favour of Mr. Apurva Parekh at the stage of deciding distribution of sale proceeds. It was submitted that it is only stage at which Kotak Mahindra Bank Ltd. could have raised objections with regard to such Deed of Assignment as the same has been relied upon by Mr. Apurva Parekh and it is a proper stage to object the same.

44. In support of his submission, reliance was placed on the decision in case of **Suzuki Parasrampura Suitings Private Limited v. Official Liquidator of M/s. Mahendra Petrochemicals Ltd (In Liqn)** (CAV Judgment dated 02.09.2016 rendered in O.J. Appeal No.4

of 2016) of this Court wherein it is held that it is a matter to be considered by the Company Judge to decide the quantum that is to be allowed to the secured creditor. It was therefore submitted that merely by assignment by the secured creditor in favour of the Ex-Director of company in liquidation of the entire debt of the financial institution, the Ex-Director i.e. Mr. Apurva Parekh and sister concern i.e. Essence Finance and Investment Ltd. cannot be said to be having the same claim at par with the secured creditors and the learned Company Judge ought to have held that Essence Finance and Investment Ltd. and Mr. Apurva Parekh are entitled to the claim to the extent of amount paid by them to the secured creditors and for the rest of the claim they ought to have been considered as unsecured creditor so as to protect the overall interest of other secured creditors, workers and other stake holders.

45. It was further submitted that the learned Company Judge has erred in law in holding that who can be secured creditor without discussing about the documents placed on record at the time of verification of the claim. It was therefore, submitted that the impugned order is liable to be quashed and set aside.

Submissions of learned Senior Advocate Mr. S.N. Soparkar with learned advocate Mr.Masoom K. Shah with learned advocate Ms.Priyanshi Trivedi

46. On the other hand, learned Senior Advocate Mr. S.N. Soparkar appearing for Essence Finance and Investment Ltd. and Mr. Apurva Parekh submitted that the claims of Essence Finance and Investment Ltd. and Mr. Apurva Parekh are in nature of subrogee on the principle of subrogation as the debts of secured creditors is assigned to Essence

Finance and Investment Ltd. and Mr. Apurva Parekh.

47. It was submitted that the company in liquidation had borrowed money from banks and financial institutions and Mr. Apurva Parekh in capacity of the Director stood as a guarantor for those debts and subsequently, had paid-off money/loans to the banks and financial institutions and, therefore, the claim made by Mr. Apurva Parekh has been rightly considered by the learned Company Judge relying upon section 140 and section 141 of the Indian Contract Act which stipulates that where a guaranteed debt has become due on default of the principal debtor to perform the guaranteed given, the surety upon payment or performance of all the dues is liable for and is invested with all the rights which the creditor had against the principal debtor and the surety is entitled

to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not. It was therefore submitted that the learned Company Judge has rightly approved the ratio of disbursement determined by the Chartered Accountant in its report in favour of Essence Finance and Investment Ltd. and Mr. Apurva Parekh as they could not have been deprived of remedy to recover the amount paid as part of obligation under the agreement as guarantor under the provisions of the Indian Contract Act from the Corporate Debtor as Mr. Apurva Parekh in his own capacity as guarantor has sought repayment as a subrogee in exercise of his right conferred under Section 140 of the Indian Contract Act.

48. Learned Senior Advocate Mr. Soparkar

submitted that learned Company Judge has committed an error in holding that Mr. Apurva Parekh has to furnish the evidence of payment of debt and he would be entitled to the claim only if such evidence is forthcoming to be considered as a secured creditor for the amount for which he had cleared the debt and not only when he has cleared the entire debt which was due. It was further submitted that claim of Mr. Apurva Parekh is required to be considered irrespective of any documentary evidence showing the payment of debt as the documents placed on record clearly shows that there is “No Due Certificate” issued by the secured creditor namely, Bank of India and State Bank of India on payment being made by Mr. Apurva Parekh and O.A. pending before the Debts Recovery Tribunal were also not pressed by the secured creditors as the entire debt was discharged. It was therefore, submitted that M/s Essen Finance and Investment Ltd.

and Mr. Apurva Parekh have stepped into the shoes of the secured creditors and claim made by them ought to have been considered as claim of the secured creditors as they enjoys the same right of secured creditors against the company in liquidation.

49. It was submitted that so far as Kotak Mahindra Bank Ltd. is concerned, there is no dispute with regard to the claim made by it. However, dispute is with regard to the amount for which the Kotak Mahindra Bank Ltd. can be held to be secured creditor is in dispute as it is secured qua only three plants and machinery, value of which as per valuation report is about Rs. 7,00,000/-. It was therefore, submitted that the learned Company Judge ought to have held that Kotak Mahindra Bank Ltd. is entitled to Rs. 7,00,000/- only being the value of the security for which it had entered into assignment of the debt from

ICICI bank.

50. It was submitted that as per the settled legal position, the claim of the Kotak Mahindra Bank Ltd. can be entertained only qua the value of security and not the entire claim of secured creditors which was assigned to it by the Deed of Assignment. It was therefore, submitted that the Kotak Mahindra Bank Ltd.is not entitled to the larger amount of the entire decree passed by the Debts Recovery Tribunal of more than Rs. 9 crores as against security held by it of value of only Rs. 7,00,000/-. It was therefore, submitted that the learned Company Judge has committed an error in holding that once Kotak Mahindra Bank Ltd. is a secured creditor, the entire claim of the bank is liable to be considered.

51. It was further submitted that as per the

report of the Chartered Accountant treating Kotak Mahindra Bank Ltd. as secured creditor to the extent of Rs.72,00,000/- is erroneous as the claim of Kotak Mahindra Bank Ltd. is concerned, same is required to be restricted to Rs. 7,00,000/- only and the remaining amount is to be treated to be paid along with other unsecured creditors.

52. It was also submitted that as per section 529A of the Companies Act, 1956 only the secured creditor is required to be given the preference for disbursement of the amount realised on sale of assets of the company in liquidation and it is immaterial to determine the amount payable to the secured creditors beyond the value of assets which was hypothecated with the secured creditor and therefore, the learned Company Judge has committed an error in holding that value of the secured asset is immaterial to determine

the amount payable to the secured creditor under section 529A of the Companies Act.

53. In support of his submission, reliance was placed on the decision in case of **UCO Bank v. Official Liquidator, High Court, Bombay and another** reported in (1994) 5 Supreme Court Cases 1, wherein it is held as under:

> "**4.** Part VII of the Companies Act, 1956 relates to 'Winding up' and therein sec. 528 to 530 pertain to 'Proof and ranking of claims' in Ch. V relating to 'Provisions applicable to every mode of winding up', Section 529 deals with 'Application of insolvency rules in winding up of insolvent company'. Section 529-A with 'Overriding preferential payments', and Section 530 with 'Preferential payments'. It is obvious that these provisions, as they exist, apply to a winding up proceeding.
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> **6.** The existence of the security on the date the amendment came into effect creates a pari passu charge in favour of the workmen upon that security. It is only if the security has been realised, pursuant to a decree, prior to the date of the

amendment that the pari passu charge is not created, for there is no security upon which it can operate. There is, therefore, no retrospectivity in the operation of the provision as interpreted by us.

7. A debt due to a secured creditor, when recovered by realisation of the security after commencement of the winding up proceedings, results in depletion of the assets in the hands of the Official Liquidator. This provision is intended to protect the interests of the workmen in proceedings for winding up. In view of the nature of workmen's dues being similar to those of secured creditors, the purpose of this provision is to place the workmen on a par with the secured creditors and create a statutory charge in their favour on all available securities forming part of the assets of the company in liquidation so that the workmen also share the securities pari passu with the secured creditors. The workmen contribute to the growth of the capital and must get their legitimate share in the assets of the company when the situation arises for its closure and distribution of its assets first among the secured creditors due to winding up of the company. The aforesaid amendment made in the Act is a statutory recognition of this principle equating the legitimate dues of the workmen with the debts of the secured creditors of the company. To achieve this purpose, it is necessary that the amended

provision must apply to all available securities which form part of the assets of the company in liquidation on the date of the amendment. The conclusion reached by the division bench of the High court is supported by this reason.

8. Consequently, the appeal is dismissed with costs quantified at Rs. 5,000.00 (Rupees five thousand) only."

54. Reliance was also placed on the decision of Hon'ble Apex Court in case of **Jitendra Nath Singh v. Official Liquidator and others** reported in (2013) 1 Supreme Court Cases 462, wherein it is held as under:

"**3.** U.M.I. Special Steel Limited (for short 'the company') is a company registered under the Companies Act. The company became sick and went before the BIFR but the BIFR in its opinion dated 08.03.2002 recommended for winding up of the company. On 05.08.2003, the learned Company Judge of the High Court of Jharkhand passed orders for winding up of the company and appointed the official liquidator as liquidator to conduct the liquidation proceedings in relation to the company and to take over the assets, books and documents of the company. The liquidator then took over the assets of the company and sold some of the assets of the

company and paid Rs.93,64,93,586/- to the secured creditors and Rs.8,19,22,371.12p to the workmen representing 50% of their verified claims towards wages.

4. When the liquidator sold some more assets and received Rs.8,51,01,000/-, the appellant filed I.A. No.1511 of 2008 before the learned Company Judge of the High Court contending that the assets of the company situated at Chennai, Pune, Faridabad and Kolkata which have been sold are not properties over which the banks/financial institutions have any charge and therefore, they cannot be treated as secured creditors in respect of these properties and the sale proceeds from these properties should be kept separately and be paid to the workmen first before disbursing any amount to the banks/financial institutions. The banks/financial institutions, which had given loans and advances to the company, on the other hand, contended before the learned Company Judge that claim of the workmen and secured creditors stand pari passu and the Companies Act does not make any difference between the mortgaged property and other properties of the company and, therefore, the entire sale proceeds obtained from the properties of the company should be distributed among the secured creditors and workers on pro rata basis. The learned Company Judge in his order dated 28.11.2008

held that the workmen and secured creditors have pari passu charge over the properties of the company as would be clear from Sections 529 and 529A of the Companies Act and the decision of this Court in Andhra Bank v. Official Liquidator & Anr. [(2005) 5 SCC 75].

5. Aggrieved, the appellant filed Company Appeal No.10 of 2008 before the Division Bench of the High Court and contended that the secured creditors have pari passu charge with the workmen only on the properties which have been offered by the company to the secured creditors as security. In its order dated 30.09.2010, the Division Bench of the High Court, however, held that the secured creditors have pari passu charge with the workmen over all the properties of the company under sections 529 and 529A and dismissed the appeal. It is this order dated 30.09.2010 of the Division Bench of the High Court of Jharkhand that is challenged in this appeal by way of special leave under Article 136 of the Constitution."

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7. A plain reading of clause (c) of sub-section (1) of Section 529 makes it clear that in the winding up of an insolvent company, the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors as are in force for the time being under the law of insolvency with

respect to the estates of persons adjudged insolvent. This would mean that the respective rights of secured and unsecured creditors of an insolvent company, which is being wound up, will be the same as the respective rights of secured and unsecured creditors with respect to the estates of persons adjudged insolvent as are in force under the law of insolvency. In the State of Jharkhand, the Provincial Insolvency Act, 1920 (for short 'the Insolvency Act') is in force and accordingly the respective rights of secured and unsecured creditors with respect to the assets of the insolvent company being wound up will be the same as in the Insolvency Act. The Companies Act does not define a "creditor" and a "secured creditor" and hence, we have to refer to the Insolvency Act for the definitions of these two words. Section 2(1)(a) and Section 2(1)(e) of the Insolvency Act define the words 'creditor' and 'unsecured creditor' and are extracted hereinbelow:

> "2(1)(a) "creditor" includes a decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor."
>
> "2(1)(e) "secured creditor" means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor."

8. It will be clear from the

definition of 'creditor' in Section 2(1)(a) of the Insolvency Act that it is an inclusive and not an exhaustive definition, whereas it will be clear from the definition of 'secured creditor' in Section 2(1)(e) of the Insolvency Act that it is an exhaustive definition and that a secured creditor means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor. The result is that the expression 'secured creditor' in Section 529(1)(c) would mean a person who holds a mortgage, charge or lien on the property of the company or any part thereof as a security for a debt due to him from the company. Where, therefore, a creditor, such as the bank or the financial institution in this case, does not hold a mortgage, charge or lien on the property of the company or any part thereof as a security for a debt due to it from the company, it is not a secured creditor for the purposes of Sections 529 and 529A of the Companies Act.

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10. On a reading of the two provisions quoted above, we find that an unsecured creditor is entitled under Section 45 of the Insolvency Act to receive dividends equally with the other creditors, whereas the secured creditor has the right under Section 47 of the Insolvency Act to realize the security and to prove for the balance due to him in case on realization of such security he is not able to recover the entire amount due to him. If, however,

the secured creditor does not opt to realize his security but relinquishes it for the general benefit of the creditors, then he may prove for his whole debt. Under the Insolvency Act, therefore, the secured creditor has only a right over the particular property offered to him as security and all the creditors have equal rights over the other properties comprising the estate of the person adjudged insolvent.

11. In our considered opinion, therefore, on a reading of the provisions of clause (c) of sub-section (1) of Section 529 of the Companies Act along with the provisions of the Insolvency Act relating to the respective rights of secured and unsecured creditors, a secured creditor of an insolvent company which is being wound up has only a right over the particular property or asset of the company offered to the secured creditor as a security and the unsecured creditors have rights over all other properties or assets of the insolvent company. We may now examine whether the proviso to sub-section (1) of Section 529 of the Companies Act makes any difference to these rights of secured creditors and unsecured creditors of an insolvent company.

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16.1 A secured creditor has only a charge over a particular property or asset of the company. The secured creditor has the option to either realize his security or relinquish his security. If the secured creditor relinquishes his security, like any other unsecured creditor, he is entitled to prove the debt due to him and receive dividends out of the assets of the company in the winding up proceedings. If the secured creditor opts to realize his

security, he is entitled to realize his security in a proceeding other than the winding up proceeding but has to pay to the liquidator the costs of preservation of the security till he realizes the security.

16.2 Over the security of every secured creditor, a statutory charge has been created in the first limb of the proviso to clause (c) of sub-section (1) of Section 529 of the Companies Act in favour of the workmen in respect of their dues from the company and this charge is pari passu with that of the secured creditor and is to the extent of the workmen's portion in relation to the security of any secured creditor of the company as stated in clause (c) of sub- section (3) of Section 529 of the Companies Act.

16.3 Where a secured creditor opts to realize the security then so much of the debt due to such secured creditor as could not be realized by him by virtue of the statutory charge created in favour of the workmen shall to the extent indicated in clause (c) of the proviso to sub-section (1) of Section 529 of the Companies Act rank pari passu with the workmen's dues for the purposes of Section 529A of the Companies Act.

16.4 The workmen's dues and where the secured creditor opts to realize his security, the debt to the secured creditor to the extent it

> ranks pari passu with the workmen's dues under clause (c) of the proviso to sub-section (1) of Section 529 of the Companies Act shall be paid in priority over all other dues of the company."

55. Referring to the ratio of above decisions, learned Senior Advocate Mr. Soparkar submitted that a secured creditor has only a charge over a particular property or asset of the company and the secured creditor has the option to either realize his security or relinquish his security and only if the secured creditor relinquishes his security, like any other unsecured creditor, he is entitled to prove the debt due to him and receive dividends out of the assets of the company in the winding up proceedings. It was therefore, submitted that in facts of the case when the Kotak Mahindra Bank Ltd. has not opted to realise its security, it is entitled to realise the same in a proceeding other than the winding up proceeding but has

to pay the liquidator the costs of preservation of the security till it is realised.

56. Learned Senior Advocate Mr. Soparkar also relied upon the decision in case of **ICICI Bank Limited v. Official Liquidator of APS Star Industries Limited and others** reported in (2010) 10 Supreme Court Cases 1, wherein it is held as under:

> "**45.** In the alternative, since the borrower(s) has relied on Sec. 130 of the said TP Act, one needs to analyse the contentions raised in that regard. According to the borrower(s) assignment of Financial Instruments in possession of ICICI Bank Ltd. to Kotak Mahindra Bank Ltd. transfers not merely the right to recover the debt but also transfers the obligations under the Financial Instruments "as if they were executed by the clients of ICICI Bank in favour of the assignee", i.e., Kotak Mahindra Bank Ltd. According to the borrower(s), an assignment of a debt can never carry with it the assignment of te obligations of the assignor unless there is a novation of the contract by all parties. Therefore, according to the borrower(s), the impugned

Deed of Assignment is legally unsustainable without novation of original contract between ICICI Bank Ltd. (assignor) and the borrower(s) (assignee). We find no merit in the above arguments.

46. As stated above, an outstanding in the account of a borrower(s) (customer) is a debt due and payable by the borrower(s) to the Bank. Secondly, the Bank is the owner of such debt. Such debt is an asset in the hands of the Bank as a secured creditor or mortgagee or hypothecatee. The Bank can always transfer its asset. Such transfer in no manner affects any right or interest of the borrower(s) (customer). Further, there is no prohibition in the BR Act, 1949 in the Bank transferring its assets inter se. Even in the matter of assigning debts, it cannot be said that the Banks are trading in debts, as held by the High Court(s). The assignor Bank has never purchased the debt(s). It has advanced loans against security as part of its Banking business. The account of a client in the books of the Bank becomes Non Performing Asset when the client fails to repay. In assigning the debts with underlying security, the Bank is only transferring its asset and is not acquiring any rights of its client(s). The Bank transfers its asset for a particular agreed price and is no longer entitled to recover anything from the borrower(s). The moment ICICI Bank Ltd. transfers the

debt with underlying security, the borrower(s) ceases to be the borrower(s) of the ICICI Bank Ltd. and becomes the borrwer(s) of Kotak Mahindra Bank Ltd. (assignee).

47. At this stage, we wish to once again emphasize that debts are assets of the assignor Bank. The High Court(s) has erred in not appreciating that the assignor Bank is only transferring its rights under a contract and its own asset, namely, the debt as also the mortgagee's rights in the mortgaged properties without in any manner affecting the rights of the borrower(s)/mortgagor(s) in the contract or in the assets. None of the clauses of the impugned Deed of Assignment transfers any obligations of the assignor towards the assignee.

48. In the case of Khardah Company Ltd. V/s. Raymon & Co. (India) Private Ltd. reported in (1963) 3 S.C.R. 183 the Supreme Court has held that the law on the subject of assignment of a contract is well settled. An assignment of a contract might result by transfer either of the rights or by transfer of obligations thereunder. There is a well recognized distinction between the two classes of assignments. As a rule, obligations under a contract cannot be assigned except with the consent of the promisee, and when such consent is given, it is really a novation resulting in substitution

> of liabilities. That, rights under a contract are always assignable unless the contract is personal in its nature or unless the rights are incapable of assignment, either under the law or under an agreement between the parties. A benefit under the contract can always be assigned. That, there is, in law, a clear distinction between assignment of rights under a contract by a party who has performed his obligation thereunder and an assignment of a claim for compensation which one party has against the other for breach of contract."

57. Referring to the aforesaid judgment of the Hon'ble Apex Court, it was submitted that the learned Company Judge has rightly held that debts are the assets of the assignor bank and in facts of the case, Essence Finance and Investment Ltd. and Mr. Apurva Parekh have discharged the debt of the secured creditors. It was therefore, submitted that section 130 of the Transfer of Property Act, would not be applicable in facts of the case because an assignment of a debt can never carry with it the assignment

of the obligations of the assignor unless there is a novation of the contract by all parties. It was submitted that on perusal of the Deed of Assignment, ICICI bank is only required to be paid the value of security it held against the three machines of Rs. 7,00,000/- only.

58. Learned Senior Advocate Mr. Soparkar also referred to and relied upon the decision of Hon'ble Apex Court in case of **ICICI Bank Limited vs. Sidco Leathers Limited** reported in (2006) 10 SCC 452 wherein the Hon'ble Apex Court has held that the amendment introduced in section 529A of the Companies Act does not take away the first charge priority rights of the secured creditor and has elaborately discussed the inter-se priority of the secured creditors. It was further held that because the Companies Act is silent on how inter-se priority among the multiple secured

creditors should be handled, the general principle that is stipulated in section 48 of the Transfer of Property Act would be applicable and the creditor who created the first charge gets the priority.

59. It was therefore, submitted that O.J. Appeal No.9/2024 and Cross Objections filed by Essence Finance and Investment Ltd. and Mr. Apurva Parekh are required to be allowed and appeal filed by Kotak Mahindra Bank Ltd. is liable to be dismissed on the facts of the case.

Rejoinder of learned Senior Advocate Mr. R.S. Sanjanwala with learned advocate Mr. Tirth Nayak

60. In rejoinder, learned Senior Advocate Mr. Sanjanwala submitted that Kotak Mahindra Bank Ltd. is entitled to the disbursement as per the report of the Chartered Accountant. It was submitted that reliance placed on

behalf of Essence Finance and Investment Ltd. and Mr. Apurva Parekh on the decision of Hon'ble Apex Court in case of **Suzuki Parasrampura Suitings Private Limited v. Official Liquidator of Mahendra Petrochemicals Ltd. (In Liquidation) and others** reported in 2018 (10) SCC 707 is not applicable in facts of the case but the observations made by the Division Bench of this Court while deciding the O.J. Appeal No. 4 of 2016 which is not disturbed by the Hon'ble Apex Court would be applicable in the facts of the case. Learned Senior Advocate Mr. Sanjanwala invited the attention of the Court to the following observations in the said judgment of the Division Bench of this Court:

> "**13.7** Even otherwise, nature of transaction of transferring right, title, interest and other benefits by way of deed of assignment of debts by IFCI Ltd., a company duly incorporated under the Companies Act, 1956, So revealed in deed of

assignment in which assignor IFCI Ltd. is a public financial institution in terms of Section 4A(1)(ii) of the Companies Act, 1956 and established under Section 3 of the Industrial Finance Corporation Act, 1948 and thus creation of the statute empowered to transact business as specified in Section 23 of The Industrial Finance Corporation Act, 1948, is repository of pubic fund. That assignment of debts of more than Rs.160 crores to be recovered from the company in liquidation for a paltry sum of Rs.58 lakhs towards consideration of dues amounts unconscionable business transaction and a ground for application of mind prima facie against public interest even at the stage of considering an application for substitution in place of assignor, which has far reaching consequences. The company Court dealing with assets of the company in liquidation based on reports filed by Official Liquidator, who is an eye and ear of the Company Court cannot simply ignore or brush aside legitimate claim of other secured creditors in such a scenario.

13.8 In the case of Sesa Industries Ltd. v. Krishna H. Bajaj & Ors. [AIR 2011 SC 1070], the Apex Court in para 39 held as under:

> "39. An Official Liquidator acts as a watchdog of the Company Court, reposed with the duty of satisfying the Court that the affairs of the company, being

dissolved, have not been carried out in a manner prejudicial to the interests of its members and the interest of the public at large. In essence, the Official Liquidator assists the Court in appreciating 25 1951 SCR 277 26 AIR 1968 SC 615 3 the other side of the picture before it, and it is only upon the amalgamation scheme, together with the report of the Official Liquidator, that the Court can arrive at a final conclusion that the scheme is in keeping with the mandate of the Act and that of public interest in general. It, therefore, follows that for examining the questions as to why the transferor-company came into existence; for what purpose it was set up; who who were were its promoters; controlling it; what object was sought to be achieved by dissolving it and merging with another company, by way of a scheme of amalgamation, the report of an official liquidator is of seminal importance and in fact facilitates the Company Judge to record its satisfaction as to whether or not the affairs of the transferor company had been carried on in a manner prejudicial to the interest of the minority and to the public interest".

13.9 Likewise, even if name of assignee is to be substituted in place of assignor, the Company Court

> can certainly examine such issue in the context of public interest SO as to protect overall interest of secured creditors / workers and other stake-holders. The substitution in the facts of this case has genesis in the Deed of Assignment of debts and the assignment made under circumstances to which reference is made in earlier paras of this order create doubt about bonafide of transactions by assignor, a public financial institution registered under the Companies Act, 1956 in favour of assignee, a private limited company for a consideration of Rs.58 lakhs against total outstanding dues of more than Rs.160 crores can be said to be not in public interest and, therefore also, prayer of substitution cannot be granted."

61. Referring to the above observations, it was submitted that in absence of any bona fide transaction in favour of Essence Finance and Investment Ltd. and Mr. Apurva Parekh under the provisions of the Companies Act, 1956, for a meager consideration, it could not have weighed with the learned Company Judge to consider Essence Finance and Investment Ltd. and Mr. Apurva Parekh at par

with secured creditors like the Kotak Mahindra Bank Ltd.

62. Learned Senior Advocate Mr. Sanjanwala also referred to and relied upon the decision in case of **BRS Ventures Investments Limited v. Srei Infrastructure Finance Limited and another** reported in (2025) 1 Supreme Court Cases 456, wherein the Hon'ble Apex Court has held as under:

> "**40.** The words used in Section 140 are "upon payment or performance of all that he is liable for". When the principal debtor commits a default and when the liability under the deed of guarantee of the surety is not limited to a particular amount, its liability is in respect of the entire amount repayable by the principal debtor to the creditor. The words all that he is liable used under Section 140 cannot be ignored. The principal borrower must continuously indemnify the surety. Section 140 of the Contract Act may be founded on the said obligation. The 1st respondent-financial creditor relied upon a decision of this Court in the case of **Economic Transport Corporation, Delhi[(2010) 4 SCC 114]**, which holds that the doctrine of subrogation is a

creature of equity. Therefore, the Section will have to be interpreted having regard to the equitable principles. If the surety pays the entirety of the amount payable under guarantee to the creditor, Section 140 provides a remedy to the surety to recover the entire amount paid by him in the discharge of his obligations. Therefore, the surety gets invested with the rights of the creditor to recover from the principal debtor the amount which was paid as per the guarantee. If the surety pays only a part of the amount payable to the creditor, the equitable right the surety gets under Section 140 will be confined to the debt he cleared.

41. Under the corporate guarantee, in the facts of this case, the liability of ACIL was to the extent of the entire amount repayable by the 2nd respondent-corporate debtor to the corporate creditor. In the CIRP of ACIL, the appellant paid a sum of Rs. 38.87 crores only to the 1st respondent-financial creditor. The amount was paid by the appellant on behalf of ACIL, the corporate guarantor. For the rest of the amount payable as per the guarantee, the 1st respondent-financial creditor had to take a haircut because of the involuntary process by operation of law. Only the liability of ACIL under the corporate guarantee to repay the loan to the 1st respondent-financial creditor has been extinguished on the payment of Rs. 38.87 crores. By

> the involuntary act of the creditor of accepting part of the amount from the surety in the discharge of the entire liability of the surety, even if Section 140 is attracted, it will confer on the guarantor or the appellant the right to recover only the amount mentioned above from the corporate debtor. The subrogation will be only to the extent of the amount recovered by the creditor from the surety. Notwithstanding the subrogation to the extent of the amount paid on behalf of the corporate guarantor by the resolution applicant, the right of the financial creditor to recover the balance debt payable by the corporate debtor is in no way extinguished."

63. Referring to above decision of the Hon'ble Apex Court, it was submitted that subrogation will be only to the extent of amount recovered by the creditor from the surety and not the entire claim of the secured creditors. It was therefore, submitted that learned Company Judge ought to have restricted the claim of Essence Finance and Investment Ltd. and Mr. Apurva Parekh to the extent of the amount paid by them to the

secured creditors and the entire claim of the secured creditors ought not to have been considered for disbursement of the amount.

Analysis and Conclusion

64. Having heard the learned advocates for the respective parties and considering the facts of the case, following questions arises from the impugned order passed by learned Company Judge for consideration:

1) Whether Essence Finance and Investment Ltd. and Mr. Apurva Parekh are entitled to the claim of the erstwhile secured creditors i.e. Bank of India, State Bank of India, GIIC and GSFC whose debts have been discharged by them or to the extent of amount paid by Essence Finance and Investment Ltd. and Mr. Apurva Parekh to the secured creditors?

2) Whether the Kotak Mahindra Bank Ltd. is

entitled to the value of the security only or the entire debt assigned to it by ICICI bank and decree passed by Debts Recovery Tribunal amounting to Rs.9,82,16,530/- together with simple interest at the rate of 6% per annum from 12.03.2001 till realisation.

65. It would therefore be necessary to take note of relevant provisions at this stage:

The Transfer of Property Act, 1882

> **130. Transfer of actionable claim. — (1)**The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instruments, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not: Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against

whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceeding and without making him a party thereto.

The Indian Contract Act, 1872

140. Rights of surety on payment or performance. —
Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

141. Surety's right to benefit

of creditor's securities. —
A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

The Companies Act, 1956

529. Application of insolvency rules in winding up of insolvent companies. -
(1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to-
…….
(c) the respective rights of secured and unsecured creditors; as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent

The Provincial Insolvency Act, 1920
2. Definitions **(1)** In this Act, unless there is anything repugnant in the subject or context,—

(a) "creditor" includes a

> decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor;
>
> **(e)** "secured creditor" means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor;..”

66. Considering the above provisions, it is clear that in absence of definition of “secured creditor” under the Companies Act,1956, the Hon’ble Apex Court has referred to definition of “secured creditor” given as per provisions of the Insolvency Act in case of **Jitendra Nath Singh**(supra) and accordingly, the same would be applicable while considering the provisions of section 529(1)(c) of the Companies Act. Therefore, to ascertain as to who is secured creditor under the provisions of the Companies Act for disbursement of the amount realised on sale of assets of the company in liquidation as per the provisions of section 529 and 529A of

the Companies Act, the "secured creditor" would mean a person who holds a mortgage, charge or lien on the property of the company or any part thereof as a security for a debt due to him from the company. Therefore, Essence Finance and Investment Ltd. and Mr. Apurva Parekh have to show and prove by documentary evidence that by paying the outstanding dues of the secured creditors namely Bank of India, State Bank of India, GIIC and GSFC, it has entered into the shoes of the secured creditors for the secured debt of the company in liquidation. However, the learned Company Judge has rightly held that there is no documentary evidence on record to suggest that entire debts have been cleared by Essence Finance and Investment Ltd. and therefore, as per the provisions of section 140 of the Indian Contract Act, the claim of Essence Finance and Investment Ltd. and Mr. Apurva Parekh as subrogee on the premise that

amount of debt is discharged in capacity of guarantor of the company in liquidation, would be applicable only to the extent of debts discharged by Essence Finance and Investment Ltd. and Mr. Apurva Parekh.

67. Learned Company Judge has therefore, rightly considered the provisions of section 128 of the Indian Contract Act which stipulates that liability of surety is co-extensive with that of principal debtor unless otherwise provided by contract.

68. Reliance placed on para no.11 in case of **State of Madhya Pradesh vs. Kaluram** reported in AIR 1967 SC 1105 would be squarely applicable in facts of the case, as the guaranteed debt has become due on account of the default of the principal debtor i.e. company in liquidation to perform its duty and therefore Essence Finance and Investment

Ltd. and Mr. Apurva Parekh are rightly held to be entitled to the claim made by them as secured creditors as per the provisions of the Companies Act on the principle of subrogation. Para no.11 reads as under:

> " **11.** Kaluram by executing the surety bond had undertaken to discharge the liability arising out of any act, omission, negligence or default of the forest contractor. The surety Kaluram contends that because the State lost or parted with the security he stood discharged. By sec. 140 of the Indian Contract Act, 1872 , where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor; and by sec. 141 it is provided : "A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security." The State had as already observed, a first charge over the goods. The State was also

> entitled to prevent the goods from being removed without payment of the instalments due. The expression "security" in sec. 141 is not used in any technical sense; it includes all rights which the creditor had against the property at the date of the contract. The surety is entitled on payment of the debt or performance of all that he is liable for, to the benefits of the rights of the creditors against the principal debtor which arise out of the transaction which gives rise to the right or liability: he is therefore on payment of the amount due by the principal debtor entitled to be put in the same position in which the creditor stood in relation to the principal debtor. If the creditor has lost or has parted with security without the consent of the surety, the latter is, by the provision contained in sec. 141, discharged to the extent of the value of the security lost or parted with."

69. It would therefore, be pertinent to note that reliance placed by the learned Senior Advocate Mr. Sanjanwala on the observations made by the Division Bench in case of **Suzuki Parasrampura Suitings Private Limited** in O.J. Appeal No.4 of 2016 would not be applicable as the Hon'ble Apex Court in its decision

arising out of the said judgment and order has confirmed the same inasmuch as the facts recorded by the Apex Court clearly show that the Company Petition for winding up was pending and the company had preferred for rehabilitation to the BIFR and during the pendency of the same, the company entered into an unregistered MOU with the sister concern of the appellant Suzuki Parasmapuria Suitings Ltd. whereas the law enunciated by the Division Bench and the Hon'ble Apex Court, as rightly held by the learned Company Judge to be not applicable in the facts of the case. The allegation of the Kotak Mahindra Bank Ltd. regarding the alleged fraud being committed by Essence Finance and Investment Ltd. and Mr. Apurva Parekh in order to lay claim is not existent in the facts of the case and merely because Essence Finance and Investment Ltd. has not continued with recovery proceedings after entering into

Deed of the Assignment before the Debts Recovery Tribunal would not ipso facto lead to the conclusion that such deeds are entered to commit fraud.

70. It also emerges from the record that Kotak Mahindra Bank Ltd. has acquired the debt from ICICI bank vide assignment deed dated 29.09.2004 and Debts Recovery Tribunal has passed the decree in favour of Kotak Mahindra Bank Ltd. for more than Rs. 9 crores. Considering such facts, the Chartered Accountant has considered amount of Rs. 72,00,000/- as secured as the charge was registered before the Registrar of Companies for foreign currency loan. Hence the objections raised on behalf of Essence Finance and Investment Ltd. and Mr. Apurva Parekh have rightly been rejected by the learned Company Judge. The learned Company Judge has further relegated the issue of

claim of rate of conversion raised by the Kotak Mahindra Bank Ltd. for examination by the Chartered Accountant and accordingly, has directed the Chartered Accountant for preparing fresh report in light of the observations made in the order.

71. Learned Company Judge has also rightly rejected Misc. Civil Application filed by Essence Finance and Investment Ltd. and Mr. Apurva Parekh by observing that the claim of Kotak Mahindra Bank Ltd. cannot be restricted to Rs. 7,00,000/- vis-a-vis the decree passed by Debts Recovery Tribunal of Rs.9,82,16,530/- which has achieved finality.

72. In view of foregoing reasons and in view of above findings arrived at by learned Company Judge, no interference is called for in the impugned judgment and order. O.J. Appeal No.6 of 2023 with O.J. Appeal No.9 of

2024 and Cross Objection No.4 of 2024 in O.J. Appeal No.6 of 2023 are hereby dismissed.

(BHARGAV D. KARIA, J)

(L. S. PIRZADA, J)

RAGHUNATH R NAIR