NATIONAL COMPANY LAW TRIBUNAL

COURT-V, MUMBAI BENCH

4. IA/70/2025 C.P. (IB)/163(MB)2023

IN THE MATTER OF

Phoenix Arc Private Limited … Petitioner

Vs

Precision Realty Developers Pvt Ltd … Respondent

U/s 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 12.05.2026

CORAM:

SH. NILESH SHARMA
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: Pankaj Uttaradhi i/b Ms. Sabeena Mahadik (VC)

For the Respondent:

ORDER

IA/70/2025- The above IA is listed for pronouncement of order. The same is pronounced in open Court, vide a separate order.

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

Sd/-
NILESH SHARMA
Member (Judicial)

//Avdhesh (PS)//

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, V

IA (IBC) NO. 70 OF 2025

IN

Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016

CP (IB) NO. 163/MB/2023

IN THE MATTER OF

IndusInd Bank Ltd

Registered office at: 2401, General Thimmayya Road, Pune - 411 011

Corporate office at: 11th floor, Tower 1, One World Centre, 841, S. B. Marg, Prabhadevi, Mumbai- 400013

… Applicant

Versus

Pradeep Kabra,

Resolution Professional of Precision Realty Developers Pvt. Ltd.

301, 3rd Floor, Reegus Business Centre, New City light Road, Above Mercedes-Benz Showroom, Bharthana-Vesu, Surat 395007

… Respondent No. 1/ Resolution Professional

Phoenix ARC Private Limited,

3rd floor, Wallace Towers, 139/140/B/1, Crossing Sahar Road and Western Express Highway, Vile Parle (East), Mumbai - 400057

… Respondent No. 2

OCL Steel & Iron Ltd.

Having registered office at: Village Lamloi, Post. Garvana, Rajgangpur, Orissa, India, 770017

… Respondent No. 3

IN THE ORIGINAL MATTER OF

Phoenix ARC Private Limited

… Financial Creditor

Versus

Precision Realty Developers Private Limited

… Corporate Debtor

Order Delivered on: 12.05.2026.

Coram:

Sh. Nilesh Sharma, Hon'ble Member (Judicial)

Sh. Charanjeet Singh Gulati, Hon'ble Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: - Adv. Mr. Shadab S. Jan a/w. Mr. Sabeena Mahadik and Mr. Pankaj Uttaradhi (PH)

For the Respondent No. 1: - Adv. Aniket Malu (VC)

For the Respondent No. 2: - Adv. Niyati Merchant i/b MDP Legal (VC)

ORDER

IA (IBC) NO. 70 OF 2025

1. The present IA dated 04.11.2024 has been filed by the IndusInd Bank Limited ('**the Applicant**') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('**IBC/the Code**') read with Rule 11 of National Company Law Tribunal Rules, 2016 ('**NCLT Rules'**) with the following prayers:

(a) reject the application filed by Respondent No. 1 under Section 31 of Insolvency & Bankruptcy Code, 2016 for approval of resolution plan submitted by OCL Iron & Steel Limited, and pass consequential order under Section 33 of Insolvency & Bankruptcy Code, 2016 for initiating liquidation process of the Corporate Debtor;

(b) pass an order permitting the Applicant to withdraw its security interest and to realise the same outside the liquidation process in accordance with law;

(c) In the alternative and strictly without prejudice to prayer clauses (a) and (b), pass an order to:

i. set aside Resolution No. 3 passed in the 13th meeting of Committee of Creditors, and;

ii. remand the resolution plan submitted by OCL Iron & Steel Limited/Respondent No.3 for reconsideration before the Committee of Creditors, and;

iii. direct the Respondents to provide minimum liquidation value commensurate with the value of

the security interest held by the creditors and ensure that a Resolution Plan made and voted upon is in compliance of the provisions of the Code.

(d) In the alternative and strictly without prejudice to prayer clauses (a) to (c), direct OCL Iron & Steel Limited/Respondent No.3 to provide minimum liquidation value of Rs.19,72,12,274.93 to the Applicant under the Resolution Plan;

(e) pending hearing, adjudication and final disposal of the present application, keep in abeyance the hearing, adjudication and pronouncement of orders in application filed by Respondent No. 1 under Section 31 of Insolvency & Bankruptcy Code, 2016 for approval of resolution plan submitted by OCL Iron & Steel Limited, being Interlocutory Application filing No. 2709138091392024;

(f) pass any other order, grant any other relief or issue any other direction as this Hon'ble Tribunal may deem fit, proper or necessary in the interest of justice; and

(g) Costs

Particulars of the Parties:

2. The Applicant is a secured financial creditor of Precision Realty Developers Private Limited ("**Corporate Debtor**") and holds 23.4% voting share in the Committee of Creditors ("**CoC**").

3. Pradeep Kabra, Respondent No.1, is the Resolution Professional of the Corporate Debtor.

4. Phoenix ARC Private Limited, Respondent No.2, is an Asset Reconstruction Company and a financial creditor of the Corporate Debtor, holding 76.6% voting share in the CoC.

5. OCL Iron & Steel Limited, Respondent No.3, has been declared the Successful Resolution Applicant by the CoC.

Brief facts as per the Application;

6. In March 2017, Nice Texcot Trading & Agency Pvt. Ltd ('**Borrower**') approached the IndusInd Bank Limited ('the **Applicant**') for financial assistance for its long-term and working capital requirements. Accordingly, the Applicant sanctioned various term loan and credit facilities, modified from time to time through sanction letters dated 14.03.2017, 17.03.2017, 30.03.2017, 22.03.2021 and 28.06.2021

7. It is submitted that, due to financial stress caused by the COVID-19 pandemic in 2020, the Borrower sought restructuring under the RBI Resolution Framework dated 06.08.2020. Pursuant thereto, the Applicant issued a fresh Sanction Letter dated 28.06.2021 sanctioning a total credit limit of Rs. 118.13 crore (including the existing limit of Rs. 108.83 crore and a Funded Interest Term Loan (FITL) of Rs. 9.30 crore) and a Supplementary Term Loan Agreement dated 28.06.2021 was executed. To secure the said facilities, The Precision Realty Developers Private Limited (the "Corporate Debtor") created an exclusive mortgage over the land (along with all building, plant and machinery standing thereon) situated at Burdwan District, West Bengal admeasuring 6.20 acres ('the **said land**') by deposit of title deeds, recorded through a Memorandum of Entry dated 28.06.2021, and the charge was registered with the Registrar of Companies, West Bengal under Section 77 of the Companies Act, 2013, making the Applicant a secured creditor. The Corporate Debtor also

executed a Deed of Corporate Guarantee dated 28.06.2021, with liability limited to the value of the mortgaged land as per valuation reports obtained by the Applicant.

8. The Applicant submits that the Borrower Company breached its obligations under the Supplementary Term Loan Agreement, leading the Applicant to recall the facilities and classify the account as NPA. The Applicant thereafter issued a Demand Notice dated 29.08.2022, invoking the Deed of Corporate Guarantee and calling upon the Corporate Debtor to pay Rs. 103,64,96,442/-, being the outstanding amount at the relevant time. Upon failure of the Borrower Company and the Corporate Debtor to discharge their liabilities, the Applicant initiated recovery proceedings under the SARFAESI Act, 2002 and the Recovery of Debts and Bankruptcy Act, 1993.

9. It is submitted that during the pendency of these proceedings, The Adjudicating Authority vide order dated 20.10.2023 in CP (IB) No. 163/MB/2023, admitted the Company Petition under Section 7 of the Code filed by Phoenix ARC Private Limited (‘**Financial Creditor’**) for initiation of Corporate Insolvency Resolution Process (‘**CIRP**’) of the Corporate Debtor. Pursuant to the said order, Mr. Pradeep Kabra (‘**Respondent No.1’/ ‘Resolution Professional’/‘RP**’) bearing Registration No. IBBIIIPA-00IIIP-POII04/2017-18/11790 was appointed as the Resolution Professional.

10. The Applicant submitted its claim of Rs. 117,95,71,468/- to Respondent No.1 on 07.11.2023. However, Respondent No.1 admitted only Rs. 40,50,00,000/-, being the estimated value of the security interest based on the value of the said land and building and the terms of the Corporate Guarantee Deed, and constituted the CoC comprising the Applicant and

Respondent No.2. During the CIRP, Respondent No.1 also obtained valuation reports under Regulation 35 of the CIRP Regulations, which set out the following values of the said land:

		Liquidation value of said Land
i.	Valuer No. 1-AAA	Rs. 21,18,79,000
ii.	Valuer No. 2-Bharat Gajjar	Rs. 18,00,00,000
iii.	Mean value	Rs. 19,59,39,500
	Securities and Financial Assets	Rs. 1,27,72,775
	Total	Rs. 20,87,12,275

11. It is stated that the Respondent No. 1 published Form G dated 11.03.2024 inviting Expressions of Interest ('**EOI**') from Prospective Resolution Applicants ('**PRA**s'). After shortlisting eligible applicants, Respondent No.1 issued the Request for Resolution Plan ('**RFRP**') outlining the parameters and process for submission and consideration of resolution plans. During discussions on the submitted plans, the Applicant raised concerns regarding the ambiguity in the treatment of financial creditors, particularly in relation to their security interest and its value. Despite the Applicant being a secured creditor with exclusive mortgage over the said land, the resolution plans did not provide financial outlay or distribution equivalent with the value and priority of its security interest.

12. It is submitted that in the 13th CoC meeting held on 26.08.2024, the resolution plans were put up for voting. During the meeting, the Applicant sought that the distribution under the plans be commensurate with the value and priority of the security interests held by financial creditors. However,

Respondent Nos. 1 and 2 disregarded and opposed these concerns, suggesting instead that the value of security interests be ignored and distribution be made based on voting share. Accordingly, Respondent No.1 placed this issue for voting as Resolution No. 3. The Applicant submits that the decision to distribute sums under the resolution plans based on voting share was unfair, inequitable, and contrary to law, violating Section 30(2)(b) of the Code.

13. The Applicant submits that following the e-voting, Respondent No.3 emerged as the Successful Resolution Applicant ('**SRA**'). The results also showed that Resolution No.4, providing for distribution of sums based on voting share, was approved with the purported requisite majority. The Applicant, while retaining its vote for distribution based on the value of its security interest, did not support any resolution plan and thus voted as a dissenting financial creditor. Under the distribution mechanism decided by Respondent No.2, the total financial outlay of Rs. 26,01,00,000/- would result in the Applicant receiving only Rs. 4,63,58,273/- as a Liquidation value distributed in terms of Section 53 of the Code being the dissenting financial creditor.

14. It is stated that the Applicant complained of the illegality and unfairness of the Resolution Plan and the approval, and sent an email dated 09.09.2024 recording its objections. The Respondents have neither replied nor taken any steps to rectify or redress the illegal, unfair, and inequitable treatment of the Applicant.

15. The Applicant submits that, as the sole and exclusive charge holder of the said land, it was allocated only Rs. 4,63,58,273/- (Liquidation value distributed in terms of Section 53 of the Code) under the Resolution Plan, far below the valued security interest of Rs. 40,50,00,000/- and the

minimum liquidation value (mean Liquidation Value of the said land is around Rs. 19,59,39,500/-). Respondent No.1, abusing the majority of Respondent No.2, passed Resolution No.4, directing distribution based on voting shares rather than the value of security interests and inter se priority of lenders, effectively redrawing contractual rights, which is illegal, unfair, and inequitable.

16. The Applicant receives far less than its due, while Respondent No.2 benefits disproportionately. It is further stated that, had Respondent No.2 agreed to distribute based on the value of security interests, the liquidation value due to dissenting financial creditors would have complied with Section 30(2)(b) of the Code, as set out below:

	Value of Security Interest	**Liquidation value payable**
i.	**Applicant**	Rs. 19,72,12,274.93
ii.	**Respondent No. 2**	Nil as they have charge on the current assets

17. It is stated that the Resolution Plan provided for an amount of only approx. Rs. 7 Crores for Resolution Plan Value distribution in terms of Section 53 of the Code. This violates Sections 30(2)(b) and Section 30(4), 53(1) of the Code, Regulation 38 of the CIRP Regulations, and the applicable Guidelines, undermining safeguards for secured creditors.

18. Further, the Applicant filed rejoinder dated 21.07.2025 where it stated that Respondent No. 2 does not have any charge or lien over the said land but the sole security interest created in favour of Respondent No. 2 are receivables of lease rentals which have no monetizable value.

19. In support of their submissions, the Applicant relied upon the following judgements of Hon'ble Supreme Court:
    i. *Jaypee Kensington Boulevard Apartments Welfare Association Vs. NBCC India (2022) 1 SCC 401*
    ii. *DBS Bank Vs. Ruchi Soya Industries Ltd. (2024) 3 SCC 752*
    iii. *ICICI Bank Limited vs. SIDCO Leathers Ltd & Ors. (2006) 10 SCC 452.*

Affidavit in Reply by Respondent Nos. 1 and 2, in brief:

20. Vide the daily order dated 17.02.2026 in the present IA, it was recorded that Respondent No.3 is a proforma party, while Respondent Nos.1 and 2 are the main contesting parties. Respondent No.1 and Respondent No.2 have filed separate replies. However, such replies are similar. Therefore, in the interest of brevity and to avoid unnecessary repetition, the individual replies are not being extracted, instead collective submissions made by the Respondents in brief, are summarised herein as below:

21. The Respondents submit that CIRP was initiated against the Corporate Debtor vide order 20.10.2023 by this Tribunal. Subsequently, Respondent No. 2 and the Applicant filed its claim of Rs. 1,32,49,69,940.84/- and Rs. 1,17,95,71,468.05/- respectively. Accordingly, upon verification of the Claim by the Respondent No. 1, the said sum of Rs. 1,32,49,69,940.84/- and Rs. 40,50,00,000/- of Respondent No. 2 and the Applicant respectively, were admitted both as Secured Financial Creditor.

22. The Respondents submits that in the 13th CoC meeting convened on 26.08.2024, evaluation matrix was discussed and the OCL Iron and Steel Limited, Respondent No. 3 achieved the highest score of 91.66. The members of the CoC finalized the evaluation matrix and deliberated on the feasibility and viability of the Resolution Plan.

23. The Respondent No. 1 states that discussions were held on the distribution mechanism of the Resolution Plan. Respondent No. 2 proposed that the distribution be carried out based on voting share, while the Applicant suggested that the distribution be based on security interest. The members of the CoC requested the Resolution Professional to share a draft distribution sheet under both proposed methods, one based on voting share/ admitted claim and the other based on security interest over the assets of the corporate debtor. After discussions and deliberations, it was decided to place this agenda item for e-voting. The voting window remained open from 6:00 PM on 28.08.2024 to 6:00 PM on 05.09.2024.

24. It is stated that, vide email dated 03.09.2024, the Respondent No.1 provided a draft distribution sheet outlining the amount available for distribution under the respective resolution plans. It ia further stated that the final distribution would be carried out in accordance with the provisions of the Code and the commercial wisdom of the CoC.

25. The Respondent Nos. 1 and 2 submits that the CoC approved the Resolution Plan submitted by Respondent No.3 with 76.6% and was declared as the Successful Resolution Applicant on 05.09.2024. However, the Applicant having voting share of 23.4% dissented from voting in favour of the Resolution Plan and the resolution for distribution of the resolution plan value as per the voting share was approved by 76.6% of the CoC.

26. The Respondent No. 1 submits that the liquidation value has been distributed in terms of Section 53 of the Code, whereby an amount of Rs. 15,17,54,002/- has been allocated to Respondent No. 2 and Rs. 4,63,58,273/- to the Applicant. Further, out of the total Resolution Plan value of Rs. 26,01,00,000/-, an amount of Rs. 19,92,36,600/- has been allocated to Respondent No. 2 and Rs. 6,08,63,400/- to the Applicant in as

Resolution Plan value distributed in terms Section 53 of the Code. The relevant portion of distribution of liquidation value as per Section 53 of the IBC is reproduced for the reference:

Particulars	**Claim Admitted (Rs.)**	**Liquidation Value distributed in terms of Section 53**	**Resolution Plan Value Distributed in terms of Section 53 (Rs.)**	**Resolution Plan Value (Rs.)**
Amount as per Liquidation Value/ Resolution Plan Value	172,99,69,941	20,87,12,275	26,01,00,000 plus CIRP Cost at Actuals	26,01,00,000
Corporate Insolvency Resolution Process Costs	At actuals	1,06,00,000/- as on date	At actuals	At actuals
Balance		19,81,12,275	26,01,00,000	26,01,00,000
Workmen's dues for the period of twenty-four months preceding the liquidation commencement	-	-	-	-
Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52	172,99,69,941	Distribution as per Section 53(1) of IBC	Distribution as per Section 53(1) of IBC	No bifurcation of the amount provided by the Resolution Applicant
- Phoenix ARC Pvt. Ltd.		15,17,54,002	19,93,36,600	26,01,00,000
- IndusInd Bank Ltd.		4,63,58,273	6,08,63,400	

27. The Respondent No.1 submits that in the 14th CoC meeting held on 09.09.2024, the CoC noted the draft distribution of the estimated

Resolution Plan amount, prepared on the basis of admitted claims and Section 53 of the Code, and it was communicated that the CoC members must mutually agree on the proposed distribution, with the final distribution to be determined in accordance with the Code and the commercial wisdom of the CoC.

28. It is further submitted that the Applicant raised objections by letter dated 09.09.2024 to the approval of the Resolution Plan. Respondent No.1 replied by email dated 12.09.2024, stating that the distribution mechanism had already been discussed and recorded in the minutes of the 14th CoC meeting, and requested the Applicant to suggest a convenient date for another CoC meeting. However, by email dated 16.09.2024, the Applicant informed the Resolution Professional that since its objections were already recorded in the CoC minutes, there was no need to convene another meeting, but requested that a legal opinion be obtained on the distribution of the Plan value. Accordingly, a legal opinion from a Senior Advocate was obtained and shared with the CoC. Subsequently, in the 15th CoC meeting held on 18.12.2024, a further legal opinion from a Senior Counsel was obtained and circulated to the CoC before submission of the Resolution Plan to the Tribunal.

29. The Respondent No.1 submits that the Resolution Plan of Respondent No.3 was evaluated in accordance with the Code and its regulations and approved by the CoC with 76.6% voting share under Section 30(4) of the Code. The Applicant, as a CoC member, raised no objections to the process.

30. Respondent Nos. 1 and 2 submit that the resolution plan was duly considered and approved by the CoC in its commercial wisdom and should not be interfered with unless it violates the Code. Respondent No. 1 further submits that Section 30(2) of the Code ensures dissenting financial

creditors receive at least their liquidation value, but does not entitle them to claim payment based on the full value of their security.

31. Respondent No. 1 submits that under Section 53(1) of the Code, distribution of proceeds follows a statutory order of priority. Secured creditors who relinquish their security are entitled to receive proceeds proportionately with other creditors in the same class, rather than strictly according to the value of their security interest. The right to enforce security outside liquidation is governed by Section 52 of the Code. Accordingly, once a resolution plan is approved and implemented, dissenting secured creditors cannot claim a distribution that departs from the statutory priority under Section 53(1). Respondent No. 2 emphasizes that the debt owed to a secured creditor is distinct from the value of their security, and Section 53(1) does not provide for distribution based on security value. Accordingly, the Applicant's submission that distribution should follow the value of security is inconsistent with the Section 53(1) of the Code.

32. Further, Respondent No. 2 submits that the Applicant participated in all CoC meetings, raised no objection, and voted against the plan. Having failed to persuade the CoC, it now seeks judicial intervention, filed after the Resolution Plan, clearly as an afterthought intended to derail the CIRP.

33. In support of their submissions, the Respondent Nos. 1 and 2 relied upon the following judgements of Hon'ble Supreme Court:

    i. *K Sashidhar Vs Indian Overseas Bank & Ors, Civil Appeal No.10673 Of 2018*

    ii. *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta ([2020] 8 SCC 531)*

iii. India Resurgence Arc. Pvt. Ltd. Vs. M/s. Amit Metaliks Ltd. & Anr. Civil Appeal No. 1700 of 2021

Analysis and Findings

34. We have heard the Ld. Counsels of the parties and perused the documents available on record. Through the present Interlocutory Application, the Applicant seeks distribution under the Resolution Plan in proportion to the value and priority over security interests over the said land of the Corporate Debtor or in alternative provide minimum liquidation value commensurate with the value of the security interest held by the creditors. The Applicant contends that by exercising its majority voting share, Respondent No. 2, passed Resolution No. 3 related to distribution on basis of admitted claim/voting share among secured creditors, resulting in the Applicant receiving less than the minimum liquidation value as a Dissenting Financial Creditor and affecting its contractual rights. The Applicant further states that Respondent No. 1 has used its majority to secure an unfair and inequitable position under the CIRP and the Resolution Plan.

35. *Per contra*, the Respondent Nos. 1 and 2 contend that distribution under the Resolution Plan is in accordance to Section 53, not inter se priority. The Resolution Plan, including the admitted claim/voting share-based distribution, was approved by 76.6% of the CoC in exercise of their commercial wisdom. The Applicant, as a dissenting financial creditor, is receiving the minimum liquidation value in accordance with the Code.

36. Basis the arguments advanced by the Ld. Counsel for the parties, the only issue for our determination can be reduced as under:

i. In the fact and circumstance of the case, whether the Applicant being the dissenting financial creditor is entitled to receive the

minimum liquidation value of the asset over which it holds exclusive security?

37. In order to address the issue on hand, following relevant and undisputed facts are noted:

i. The Applicant holds a sole and exclusive charge over the Corporate Debtor's leasehold land at Burdwan, West Bengal, admeasuring 6.20 acres, pursuant to a Guarantee Deed dated 28.06.2021. Further, sole security interest created in favour of Respondent No. 2 are receivables of lease rentals.

ii. The CIRP against the Corporate Debtor was initiated by this Tribunal vide order dated 20.10.2023.

iii. Subsequently, Respondent No. 2 and the Applicant filed claims of Rs. 1,32,49,69,940.84/- and Rs. 1,17,95,71,468.05/-, respectively.

iv. Upon verification by Respondent No. 1, claims of Rs. 1,32,49,69,940.84/- for Respondent No. 2 and Rs. 40,50,00,000/- for the Applicant were admitted, with both parties classified as Secured Financial Creditors.

v. The Applicant holds a 23.4% voting share and Respondent No. 2 holds a 76.6% voting share in the CoC.

vi. Further, as per the valuation reports obtained by Respondent No. 1 in accordance with Regulation 35 of the CIRP Regulations, the valuation of the said land is as follows:

		Liquidation Value of said Land
i.	Valuers No. 1 – AAA	Rs. 21,18,79,000
ii.	Valuer No. 2 – Bharat Gajjar	Rs. 18,00,00,000
iii.	**Mean Value**	**Rs. 19,59,39,500**
	Securities and Financial Assets	Rs, 1,27,72,775

	Total	**Rs. 20,87,12,275**

vii. In the 13th CoC meeting on 26.08.2024, the Resolution Plan of Respondent No. 3 was put to vote. On 05.09.2024, the Applicant voted against the Resolution Plan and consequently became a dissenting Financial Creditor. The Resolution Plan was approved with 76.6% voting share.

viii. Further, Resolution No. 3, pertaining to distribution according to voting share/admitted claim, was opposed by the Applicant but approved with 76.6% voting share. Resolution No. 4, relating to distribution according to security, was not approved as it failed to secure the requisite 76.6% voting share.

38. Before proceeding further on the matter, we would refer to relevant portion of Section 30(2), Section 53(1) and Section 52(1) of the code which is reproduced herein below for the easy reference:

> ***"Section 30 - Submission of resolution plan***
> *(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—*
> *(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [payment] of other debts of the corporate debtor;*
> *(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*
> *(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*
> *(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in*

accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, ***and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor****.*

...

Section 53 – Distribution of assets

(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—

(a) the insolvency resolution process costs and liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following: —

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) ***debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52****;*

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."

39. Upon plain reading of Section 30(2)(b) of the Code, it is clear that the dissenting financial creditor is entitled to payment, which should not be

less than the amount payable under Section 53(1), in the event of the liquidation of the Corporate Debtor. Section 53 of the Code specifies the manner in which the distribution of realised assets to creditors shall be in order of priority (waterfall mechanism). Section 53(1)(b)(ii) makes it evident that secured creditors who relinquish their security interest are entitled to receive proceeds from the liquidation estate in accordance with the priority prescribed therein. Additionally, Section 53 of the Code cannot be read in isolation and must be read with Section 52, which provides a secured creditor with the right to either relinquish its security interest to the liquidation estate and participate in distribution under the Section 53 waterfall, or to independently realise its security interest outside it.

40. The contention of the Respondent No. 1 that the Code does not mandate payment to a dissenting secured financial creditor strictly on the basis of the value of its security interest, and that enforcement of security outside liquidation is governed by Section 52 of the Code, is untenable. In the present case, it is undisputed fact that the Applicant holds a sole and exclusive charge over the said land valued at Rs. 19,59,39,500/-, which constitutes the principal asset of the Corporate Debtor and represents nearly the entirety of its total liquidation value of Rs. 20,87,12,275/-. In event of liquidation under Section 52 of the Code, the Applicant, being a secured financial creditor holding a sole and exclusive charge over the said land would have had the opportunity to either relinquish its security interest to the liquidation estate or independently realise its security interest under Section 52 of the Code read with Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016. Therefore, the Applicant's entitlement in the event of liquidation cannot be determined dehors the value of its exclusive security interest on the asset which has liquidation value of Rs. 19,59,39,500/-.

41. In this regard, it is relevant to refer to the observation of Hon'ble Supreme Court in case of ***DBS Bank Limited Singapore v. Ruchi Soya Industries Limited and Another*** (2024) 3 SCC 752 dated 03.01.2024, wherein it has been observed as under:

> "*26. The Code had been enacted to balance the interests of various stakeholders, inter alia, by facilitating the resolution of insolvency, promoting investment, maximising the value of assets, and increasing the availability of credit. Secured credit is important for commerce as it reduces credit risk and carries lower interest due to lower loss value in the event of failure.* ***On the resolution plan being approved, an unwilling secured creditor does and must forgo the security, albeit such an unwilling secured creditor is entitled to the value of the security as payable on the liquidation of the corporate debtor. The provision is enacted to protect the minority autonomy of creditors. It should not be read down to nullify the minimum entitlement. Section 30(2)(b)(ii) forfends the dissenting financial creditor from settling for a lower amount payable under the resolution plan.***
>
> ...
>
> *30. In India Resurgence ARC Private Limited v. Amit Metaliks Limited & Another, a two Judge Bench of this Court has referred to a judgment by a three Judge Bench of this Court in Jaypee Kensington Apartments Welfare Association & Others. v. NBCC (India) Limited & Others., to observe and hold:*
>
> > *"18. In the case of Jaypee Kensington (supra), the proposal in the resolution plan was to the effect that if the dissenting financial creditors would be entitled to some amount in the nature of liquidation value in terms of Sections 30 and 53 of IBC read with Regulation 38 of the CIRP Regulations, they would be provided such liquidation value in the form of proportionate share in the equity of a special purpose vehicle proposed to be set up and with transfer of certain land parcels belonging to corporate debtor. Such method of meeting with the liability towards dissenting financial creditors*

in the resolution plan was disapproved by the Adjudicating Authority; and this part of the order of the Adjudicating Authority was upheld by this Court with the finding that the proposal in the resolution plan was not in accord with the requirement of 'payment' as envisaged by clause (b) of Section 30(2) of the Code. ***In that context, this Court held that such action of 'payment' could only be by handing over the quantum of money or allowing the recovery of such money by enforcement of security interest, as per the entitlement of a dissenting financial creditor.****"*

...

33. In our opinion, ***the provisions of Section 30(2)(b)(ii) by law provides assurance to the dissenting creditors that they will receive as money the amount they would have received in the liquidation proceedings. This rule also applies to the operational creditors. This ensures that dissenting creditors receive the payment of the value of their security interest****.*

...

40. One of the contentions raised by the respondent no. 2 - the CoC is that Section 30(2)(b)(ii) refers only to Section 53 of the Code and not to Section 52. We find it difficult to accept the said submission to read down Section 30(2)(b)(ii) of the Code. Reference to Section 53 of the Code in Section 30(2)(b)(ii) is made with a specific purpose and objective and accordingly, we have to understand and give a cogent and effective meaning to the words to effectuate the intent. ***Section 53 of the Code refers to Section 52 thereof. We would not isolate Section 53, when we refer to Section 30(2)(b)(ii) and make it meaningless and undo the legislative intent behind the amended provision, which is clear and apparent. Whenever required, in a reference made to Section 53 of the Code, we would have to refer to Section 52 to give meaning to Section 30(2)(b)(ii) of the Code. A dissenting financial creditor is entitled to not partake the proceeds in the resolution plan, unless a higher amount in congruence with its security interest is approved in the resolution plan. The "amount" to be paid to the dissenting financial creditor should be in accordance with***

Section 53(1) in the event of liquidation of the corporate debtor. In other words, in our opinion, the dissenting financial creditor is entitled to a minimum value in monetary terms equivalent to the value of the security interest.

41. The submission that the secured creditor's entitlement to distribution under Section 53(1)(b)(ii) is applicable where the secured creditor relinquishes its security interest under Section 52 of the Code, and, therefore, is not applicable to dissenting financial creditors like the appellant is erroneous and unacceptable."

[Bold for Emphasis]

42. It is pertinent to note that the judgment in *DBS Bank Limited Singapore v. Ruchi Soya Industries Limited & Anr*. (Supra) has been referred to a Larger Bench. However, the facts therein are related to pari-passu distribution of resolution proceeds among all secured financial creditors, whereas in the present case, the dispute pertains to distribution based on admitted claims/voting share, which entirely disregards the Applicant's sole and exclusive security interest over the said land. Therefore, the observations therein regarding the entitlement of a dissenting financial creditor to receive the minimum liquidation value in respects of its security interest are important for the determination of the issue in the present case.

43. It is also noted from the submission of the Respondent No. 1 that the distribution of the liquidation value has been distributed in terms of Section 53 of the Code in the plan. It is relevant to extract the distribution table for easy reference:

Particulars	**Claim Admitted (Rs.)**	**Liquidation Value distributed in terms of Section 53**	**Resolution Plan Value Distributed in terms of Section 53 (Rs.)**	**Resolution Plan Value (Rs.)**

Amount as per Liquidation Value/ Resolution Plan Value	172,99,69,941	20,87,12,275	26,01,00,000 plus CIRP Cost at Actuals	26,01,00,000
Corporate Insolvency Resolution Process Costs	At actuals	1,06,00,000/- as on date	At actuals	At actuals
Balance		19,81,12,275	26,01,00,000	26,01,00,000
Workmen's dues for the period of twenty-four months preceding the liquidation commencement	-	-	-	-
Debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52	172,99,69,941	Distribution as per Section 53(1) of IBC	Distribution as per Section 53(1) of IBC	No bifurcation of the amount provided by the Resolution Applicant
- Phoenix ARC Pvt. Ltd.		15,17,54,002	19,93,36,600	26,01,00,000
- IndusInd Bank Ltd.		4,63,58,273	6,08,63,400	

44. Upon perusal of the aforementioned table, it is observed that the column captioned "*Liquidation Value distributed in terms of Section 53 of the Code*" has no basis in law. Section 53 of the Code merely prescribes the waterfall mechanism for distribution of proceeds and it does not stipulate that the liquidation value of the enterprise is to be distributed among creditors in proportion to their voting share or admitted claims. There is no provision in law supporting such a method of distribution of the Liquidation Value of an enterprise according to voting share/admitted claims. Accordingly, the methodology adopted does not reflect any legally

recognised basis of distribution and also is not supported by the statutory framework of the Code. In the considered view of this Tribunal, the same is an artificial construct put forth by Respondents.

45. Consequently, the figures reflected in the column titled "*Resolution Plan Value distributed in terms of Section 53*," wherein Respondent No. 2 is shown to receive Rs. 19,93,36,600/- crores and the Applicant Rs. 6,08,63,400/- crores, to contend that the Applicant is receiving more than the minimum liquidation value of approx. Rs. 4,63,58,273/-, is misconceived, as such comparison is founded on a distribution methodology which is not recognised under the statutory framework of the Code.

46. We also note that once a Resolution Plan is approved by the Committee of Creditors, it becomes binding on the CoC and all other stakeholders, and no recourse outside the framework of the Code remains available to any person. Such a binding Resolution Plan cannot, in any circumstances, be dehors the provisions of the Code. Consequently, any interpretation adopted or decision taken by the majority of the CoC in approving the manner of distribution under the Resolution Plan must remain within the bounds of the Code and in conformity with its provisions, and cannot override the statutory provisions contained therein.

47. As regards the contention of Respondent Nos. 1 and 2 that the distribution of Resolution Plan value falls within the commercial wisdom of the CoC and is not amenable to judicial review, we note that the majority creditor has, by virtue of its dominant voting position, approved a distribution mechanism that entirely disregards the Applicant's sole and exclusive security interest, thereby depriving it of the minimum liquidation value guaranteed under Section 30(2)(b)(ii) of the Code.

48. While the Adjudicating Authority cannot substitute its view for the commercial wisdom of the CoC, the CoC cannot, in exercise of such wisdom, adopt a distribution mechanism that defeats the minimum statutory entitlement of a dissenting financial creditor under Section 30(2)(b)(ii) of the Code. In exercise of its jurisdiction under Section 31 of the Code, the Adjudicating Authority is duty bound to examine whether the Resolution Plan complies with Section 30(2) of the Code, and where the distribution proposed thereunder fails to meet the minimum threshold prescribed for a dissenting financial creditor, the Adjudicating Authority is empowered to look into and interfere to ensure compliance with the statutory mandate. The commercial wisdom of the CoC, therefore, cannot override the statutory protections guaranteed under the Code.

49. In the present case, the amount presently proposed to be paid in the plan, to the Applicant, is Rs. 6,08,63,400/-, which is not according to the minimum entitlement in terms of Section 30(2)(b)(ii) of the Code, in the event of a liquidation of the corporate debtor. Notwithstanding this, Respondent No. 2, despite holding a security interest over the receivables of lease rentals and no security interest whatsoever over the said land, is receiving Rs. 19,93,36,600/- as per Resolution Plan by virtue of its dominant 76.6% voting share. On the approval of the resolution plan, a dissenting financial creditor by operation of law deemed to have forgone its security interest but is nonetheless entitled to receive the value of such security as payable under section 53(1) of the Code in the event of liquidation of the corporate debtor and further, the provision under Section 30(2)(b)(ii) must be given its full meaning and cannot be read in a manner that undermines the minimum entitlement guaranteed to a dissenting financial creditor.

50. We accordingly hold that the distribution of the Resolution Plan value as approved under Resolution No. 3 by the CoC in its 13th meeting held on 26.08.2024 is not in accordance with the provisions of the Code and also affects the statutory entitlement of the Applicant as a dissenting secured financial creditor. The Resolution Professional needs to ensure that the distribution under the Resolution Plan is brought in conformity with the mandate of Section 30(2)(b) read with Section 53 of the Code, so as to secure to the Applicant, at the minimum, the liquidation value of Rs. 19,59,39,500/- corresponding to its sole and exclusive security interest over the said land of the Corporate Debtor.

51. For completeness, we also that note the judgment relied upon by Respondent Nos. 1 and 2. The judgment in ***India Resurgence Arc Pvt. Ltd. v. M/s. Amit Metaliks Ltd. & Anr.*** (Supra) is distinguishable on facts and on the issue arising in the present case. In the said case, the Hon'ble Supreme Court held that creditors of the same class must be treated equitably and that a dissenting financial creditor cannot insist upon a higher amount on the basis of the value of its security interest, resulting in pro rata distribution among similarly situated creditors. The said judgment, however, did not deal with a situation where the dissenting financial creditor holds a sole and exclusive charge over specific identified assets of the Corporate Debtor, with no other creditor holding any security interest over the said assets. In the present case, the Applicant does not seek a distribution higher than its entitlement, but merely asserts its statutory right to receive the minimum liquidation value referable to its sole and exclusive security interest, under Section 30(2)(b)(ii) of the Code.

52. In Committee of Creditors of ***Essar Steel India Ltd. v. Satish Kumar Gupta*** [(2020) 8 SCC 531] and ***K. Sashidhar v. Indian Overseas Bank & Ors***. [Civil Appeal No. 10673 of 2018], the Hon'ble Supreme Court was

primarily concerned with the commercial wisdom of the CoC and the limited jurisdiction of the Adjudicating Authority to interfere therewith. In contrast, the issue in the present case is whether a dissenting financial creditor holding a sole and exclusive charge over specific identified assets of the Corporate Debtor is entitled to receive the minimum liquidation value referable to its security interest under Section 30(2)(b)(ii) of the Code. Accordingly, while the principles of commercial wisdom enunciated in the aforementioned judgments remain relevant, they cannot be construed to permit a majority creditor to employ its dominant voting position within the CoC to deprive a dissenting financial creditor of its minimum entitlement under the Code. Both judgments are therefore distinguishable on facts and issue from the present case.

53. In view of the facts and circumstances of the present case and the discussions hereinabove, the issue argued and framed stands determined in affirmative. Accordingly, the present IA (IBC) NO. 70 OF 2025 stands **disposed of.** Consequential actions as may be required, may be taken in accordance with law.

Sd/-	**Sd/-**
Charanjeet Singh Gulati	**Nilesh Sharma,**
Member (Technical)	**Member (Judicial)**

Saumya – LRA