

IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, COURT NO. II

KOLKATA

I.A. (IB) NO. 1674/KB OF 2025

IN

C.P. (IB) No. 264/KB OF 2022

An Application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016, Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

EMAMI REALTY LIMITED,
Acropolis, 13th Floor,
1858/1, Rajdanga Main
Road, Kolkata - 700107,
West Bengal.

... Applicant

Versus

MR. UMESH KUMAR, LIQUIDATOR

OF FORT PROJECTS PRIVATE
LIMITED (IN LIQUIDATION),

Registration No. IBBI/IPA-
01/IPP01978/2020 -2021/13152,
Office at Satyabhama Grand,
Flat No. 4D, D Block, Kusai,
Doranda, Ranchi- 834002

...Respondent

Date of Pronouncement: 22.6.2026

Case Citation: (2026) ibclaw.in 2363 NCLT
IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 1674/KB OF 2025
IN
C.P. (IB) No. 264/KB OF 2022

CORAM:

Mr. Labh Singh, MEMBER (JUDICIAL)
Ms. Rekha Kantilal Shah, MEMBER (TECHNICAL)

Present:

| | | |
|--|---|--------------------------------------|
| Mr. Shaunak Mitra, Ld. Advocate |] | For SBOD |
| Mr. Saurav Jain, Ld. Advocate |] | |
| Mr Ratnanko Banerjee, Ld. Sr. Advocate |] | For the Applicant in IA 1691/2025 |
| Ms. Manju Bhuteria, Ld. Sr. Advocate |] | IA 1674/2025 |
| Mr. Rajashree Kajaria, Ld. Advocate | | |
| Ms. Arundhati Barman Roy, Ld. Advocate | | |
| Mr. Siddhanth Makkar, Ld. Advocate |] | For the Liquidator |
| Mr. Rishav Banarjee, Ld. Advocate |] | |
| Mr. Moulinath Moitra, Ld. Advocate |] | |
| Ms. Meenakshi Manot, Ld. Advocate |] | For the Applicant in IA 148/2025 |
| Ms. Radhika Singh, Ld. Advocate |] | & R-16 in IA 1589/2024 |
| Mr. Dripto Majumdar, Ld. Advocate |] | For R-10 in IA 1589/2024 |
| Mr. Niraj Shukla, Ld. Advocate |] | |
| Mr. Aditya Kanodia, Ld. Advocate |] | For R-9 in IA 1589/2024 |
| Mr. Pratik Dutta, Ld. Advocate |] | |

ORDER

Labh Singh Member(Judicial)

1. The present application has been filed by the applicant/financial creditor seeking to include it as a member of the Stakeholders' Consultation Committee (SCC) constituted for the liquidation process by the respondent/liquidator, Mr Umesh Kumar.
2. Briefly stated the facts of the applicant case is that it had entered into an agreement dated February 15, 2016, inter alia, with the Corporate Debtor, and an entity being Gagan Dealcom Pvt. Ltd, whereby it was agreed that a sum of Rs. 35 crores would be advanced to the Corporate Debtor with interest thereon. In terms of the said agreement, the Applicant had advanced a sum of Rs. 34.55 crore to the Corporate Debtor. Thereafter, a fresh loan agreement dated February 26, 2020, was also entered into by Applicant with the Corporate Debtor for the purpose of continued use of the earlier loan amount for the business operations of the Corporate Debtor, subject to payment of interest at the rate of 15% per annum. The Corporate Debtor defaulted in making payments and hence, the Applicant had filed the present petition being C.P.(IB) No.264/KB/2022 under Section 7 of

the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as "IBC 2016") before this Tribunal.

3. This Tribunal, vide order dated November 09, 2023, admitted the C.P.(IB) No. 264/KB/2022 in CIRP process which was upheld by the Hon'ble NCLAT by its judgment dated January 29, 2024. The Suspended Board of Directors had also preferred an appeal against the order dated January 29, 2024, before the Hon'ble Supreme Court which was also dismissed vide order dated 19th November, 2024. As such, the rights of the Applicant to participate in the Insolvency Process of the Corporate Debtor has been recognised up to the Hon'ble Supreme Court.
4. It is relevant to note that pursuant to the invitation of claims, the Committee of Creditors of the Corporate Debtor comprised of unsecured Financial Creditors, including the Applicant herein. There were no Secured Creditors of the Corporate Debtor and the same would also be reflected from the List of Creditors (as on January 25, 2025 as submitted by the Resolution Professional with the IBBI).
5. Pursuant to the constitution of the Committee of Creditors by the Resolution Professional, the Applicant had 76.63% voting share in the Committee of Creditors. The Applicant has also borne 76.63% of the CIRP cost of the Corporate

Debtor, to the tune of Rs.24,80,000/, as the member of the Committee of Creditors.

6. It has further been submitted that in the 11th Meeting of the CoC, the Resolution Plan submitted in respect of the Corporate Debtor was put for voting and ultimately rejected by the Committee of Creditors and a resolution was passed to proceed with Liquidation under Section 33(2) of the IBC 2016. This Tribunal, vide order dated June 20, 2025, passed an order of Liquidation in respect of the Corporate Debtor and the Respondent was appointed as the Liquidator.
7. On July 08, 2025, the Applicant received a notice from the Liquidator about holding the First (1st) Meeting of the Stakeholders' Consultation Committee (hereinafter referred to as "SCC") on July 10, 2025. The first (1st) Meeting of the SCC was held on July 10, 2025 and the Applicant had attended the same. By an email dated July 12, 2025, the Liquidator shared the minutes of the 1st Meeting of the SCC.
8. The Applicant after receiving the minutes of the 1st SCC, had by an email dated July 18, 2025, raised serious objections with respect to the Liquidation process of the Corporate Debtor. In the said email, it was mentioned by the Applicant that discussion on several matters were not entertained by the Liquidator in the 1st Meeting of the SCC

and that the Liquidator had adopted fees of the Liquidator without the approval of the SCC in terms of Regulation 31A(1)(c) of the Liquidation Regulations, 2016. Further, professionals were appointed without consultation with the stakeholders which was also in stark contradiction to Regulation 31A of the Liquidation Regulations, 2016. It was also highlighted that there was no voting mechanism present in the meeting.

9. The Liquidator, in reply to email dated July 18, 2025, replied vide email dated July 26, 2025. The contents of the said email dated July 26, 2025 are untrue and incorrect and are denied and disputed. It is relevant to note that in the said email, the primary defence taken by the Liquidator was that the SCC was yet to be formed. It is absurd that without the SCC being formed, the Liquidator had proceeded to pass resolutions in the 1st SCC which would have material bearing in the Liquidation process.
10. It is pertinent to mention here that Regulation 31A(1A) of the Liquidation Regulations, 2016 provides that the committee of creditors under section 21 shall function as the consultation committee with same voting rights till constitution of the consultation committee under sub-regulation (1). Hence, the Liquidator had to place the

resolutions which were passed in the 1st Meeting of the July 10, 2025 for voting before the participants of said SCC meeting, who were all members of the Committee of Creditors.

11. On August 01, 2025, the Applicant had duly filed its Proof of claim in Form 'D' with the Liquidator. In the said form, under the heading, "Whether Security Interest Relinquished", the Applicant had mentioned that it was "Not Applicable" with respect to the Applicant as the Applicant is an unsecured Financial Creditor of the Corporate Debtor.
12. By emails dated August 12, 2025, and August 14, 2025, the Liquidator had sought various information and/or documents with respect to the claim filed by the Applicant. The Applicant through its email dated August 27, 2025, had duly provided the necessary information and/or clarification as had been sought from the Liquidator. However, to the surprise of the Applicant, the Liquidator issued an email dated August 29, 2025, to the Applicant, inter alia, mentioning that the Corporate Debtor had investments in 71 companies which was held as security by the Applicant and as the Applicant had chosen not to relinquish its security interest, it would not be part of the Stakeholders' Consultation Committee. The contents of the said email dated

August 29, 2025 are untrue and incorrect and are denied and disputed.

13. The Applicant sent an email dated September 08, 2025 in reply to the said email dated August 29, 2025 issued by the Liquidator. In the said email, the Applicant had mentioned that it would be evident from the records of CIRP that the Corporate Debtor had no secured financial creditor and that the Corporate Debtor had created no charge in favour of the Applicant, reason whereof the Applicant had never been categorized as a secured financial creditor.
14. It was also clarified that only the share certificates of the Corporate Debtor in some companies, and not 71 companies, were handed over to Applicant by the Corporate Debtor, however, no further steps, including registration of charge with the Registrar of Companies was ever taken. Regulation 21 of the IBBI (Liquidation Process) Regulations 2016 provides as to the documents required to prove the existence of security interest. It was also brought to the notice of the Liquidator that none of the documents as mentioned in Regulation 21 of the Liquidation Process Regulations 2016, to prove the existence of security interest, exists in favour of the Applicant and neither is the same available in the records of any of the entities

mentioned in Regulation. The Applicant had also stated in the Form D submitted by it that the column pertaining to "whether security interest relinquished" is not applicable to the Applicant.

15. The Applicant brought to the notice of the Liquidator that the first Proviso to Regulation 31A (2) of the Liquidation Process Regulations, 2016 inter alia provides that "Provided a secured creditor who has not relinquished his security interest under Section 52 shall not be part of the consultation committee". The Applicant informed the Liquidator that as the Applicant is not the secured creditor, the question of relinquishing any security interest does not and cannot arise. The Applicant cannot be excluded from the consultation committee. The contention of the Liquidator that the Applicant has chosen not to relinquish its security interest as such the Applicant cannot be a part of the consultation committee is contrary to records and law as the Applicant is not a secured creditor and as such the question of relinquishing any security interest does not and cannot arise. The applicant has also not claimed that it is a secured creditor.
16. The Applicant states that the contention of the Liquidator that the Applicant cannot be part of the consultation

committee, as per Regulation 31A of the Liquidation Process Regulations 2016, is contrary to law as the Applicant is an unsecured financial creditor and has a right to be part of the consultation committee. The Applicant requested the Liquidator to forthwith include the Applicant in the consultation committee; however, the Liquidator has not replied to the said email dated September 08, 2025 till date.

17. It would be evident from the aforementioned facts, that the Applicant is not the secured creditor of the Corporate Debtor, reason whereof it was also categorised as an unsecured financial creditor even during the CIRP of the Corporate Debtor.
18. The Applicant submits that it is only that after the Applicant had raised objections with respect to the manner in which the Liquidation process was being conducted that the Liquidator came up with this stand that the Applicant is a secured creditor who has not relinquished its security interest. It is relevant to note that such objection has not been taken by any other creditor of the Corporate Debtor. It would be evident from the facts mentioned hereinabove that the Liquidator has failed to act in terms of the provisions of the Insolvency and Bankruptcy Code. The Liquidator has wrongfully excluded the applicant from the SCC. The

Applicant had 76.63% voting share in the Committee of Creditors.

19. The applicant in support of its case has relied upon copy of the agreement dated 15.02.2016 Annexure-A, Copy of Loan agreement dated 26.02.2020 Annexure-B, Copy of Order dated 09.11.2023 Annexure-C, Copy of Judgment of Hon'ble NCLAT dated 29.01.2024 Annexure-D, Copy of order dated 19.11.2024 of Hon'ble Apex Court Annexure-E, Copy of List of Creditors Annexure-F, Copy of Minutes of 11th Meeting of CoC Annexure-G, Copy of order dated 20.06.2025 Annexure-H, Copy of Notice received by applicant from the Liquidator about holding of First meeting of SCC on 10.07.2025 Annexure-I, Copy of Email dated 12.07.2025 Annexure-J, Copy of Email dated 18.07.2025 Annexure-K, Copy of Email dated 26.07.2025 Annexure-L, Copy of Proof of Claim dated 01.08.2025 Annexure-M, Copy of Email dated 12.08.2025, 14.08.2025, and 27.08.2025 exchanged between the Applicant and Liquidator Annexure-N, Copy of Email dated 29.08.2025 Annexure-O, Copy of Email dated 08.09.2025 Annexure-P, and Certificate under Section 65B of Evidence Act 1872.
20. The applicant has prayed that the decision taken by the Liquidator as communicated in his email dated August 29, 2025 be set aside and the Liquidator be directed to include

the Applicant to be a part of the Stakeholders' Consultation Committee.

21. Respondent appeared in pursuance of notice issued by this Tribunal and filed its reply raising preliminary objection that the present application is not maintainable based on the facts. The present application has been filed in gross abuse of the process of law and the same is liable to be dismissed in limine.
22. It is replied that following the circulation of the minutes of the 1st SCC Meeting via email dated 18.07.2025, the applicant raised certain objections to the working and procedure of the meeting. The answering respondent believes that the contentions raised by the applicant were frivolous, vexatious, unwarranted and unnecessary. Respondent denies that he had adopted Liquidator fees without the approval of the SCC and also denies that the professionals were appointed without the permission of the SCC.
23. It is replied that in the Form 'D', submitted by the applicant, under the heading "Details of any Security Held, with the Value of the Security and Date It Was Given", the Applicant has referred to the loan agreements dated 15.02.2016 and 26.02.2020. It is submitted that the

agreements clearly state that there is security in connection with the grant of the loan.

24. It is further replied that the loan agreement between the Financial Creditor and the Corporate Debtor, annexed at page 18 of the application, and a bare perusal demonstrates, ex facie, the existence of security taken in connection with the grant of the loan. The details of such security are provided at page 39 of the agreement dated 15th February, 2016, with provisions relating to the enforcement of the securities set out at page 42. The details of the loan agreement dated 26th February, 2020, the particulars of the securities securing the loan, and the mode of sale of the charged properties has specifically been provided in the application.
25. It is further replied that the applicant itself clarified that it held the share certificates of the Corporate Debtor in certain companies but not all 71 companies. Thus, the applicant should have acknowledged itself as a secured financial creditor. Thus, by not relinquishing the share certificates, which is the security, the applicant cannot be admitted as a member of the SCC, as per the provision of Regulation 31A of the Liquidation Guidelines.

26. It is denied and disputed that any alleged rights of the applicant or contentions made therein can override the statutory obligations of the Respondent or impede the ongoing lawful conduct of the liquidation process.
27. The applicant filed rejoinder to reply filed by the respondent denying the averment made in the reply affidavit and affirming contents of the application which are not reproduced here in entirety for sake of brevity. It has been stated that the share certificates were kept with the applicant pursuant to the undertaking of the shareholders of the Guarantors not to sell, transfer, alienate and/or encumber the shares held by them. It is submitted that the share certificates were kept with the applicant only with the intention to ensure that there would be no change in the shareholding pattern of the Borrower and Co-owners until repayment of the total debt in terms of the Loan Agreement dated 26.02.2020. Thus, the share certificates were not meant to be security. It is further submitted that none of the assets of the Corporate Debtor were mortgaged with the applicant and thus no question of relinquishment of security interest arises.
28. It is further submitted that Regulation 31A is clear that the members of the SCC will advise the Liquidators on

certain matters like the remuneration of the professionals. Thus, it would be evident from the records that the agenda with respect to the remuneration of the professionals were never voted upon in the first (1st) meeting of the SCC and the Respondent proceeded to appoint professionals without consultation with the SCC.

29. Heard Learned Counsel appearing on behalf of the Financial Creditor and the Liquidator. We have gone through the pleadings of the parties and documents placed on record. We have duly appreciated the law applicable on the facts and circumstances of the present case.
30. The present application has been filed by the Applicant for direction upon the Liquidator to include it in the Stakeholders' Consultation Committee and to set aside the decision of the Respondent taken by the Liquidator as communicated in his email dated August 29, 2025.
31. The Liquidator has stated that the applicant is a secured Financial Creditor and it had investments in 71 companies which was held as security by the Applicant and the Applicant had not relinquished its security interest. Therefore, it had not been included in the list of stakeholder of SCC.

32. The question arises whether the applicant is a secured financial creditor or not. The answer to this question will put the entire controversy at rest between the parties. Before we proceed to decide the question involved in the present matter, it is pertinent to refer Regulation 21A of the IBBI(Liquidation Process) Regulation 2016 which read as under:

“Regulation 21A: Presumption of security interest.

21A. (1) A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:

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

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

(a) as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case

it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date; and

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

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

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

(3) Where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to

*security interest, shall become part of the
liquidation estate.”*

33. It is also pertinent to refer provision of Regulation 31A of IBBI(Liquidation Process) Regulation 2016 which read as under:

“36A.(1) The liquidator shall constitute a consultation committee, comprising of all creditors of the corporate debtor, within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to-

(a) remuneration of professionals appointed under regulation 7;

(b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process.;

(c) fees of the liquidator;

(d) valuation under sub- regulation (2) of regulation 35;

(e) the manner in which proceedings in respect of preferential transactions, undervalued transaction, extortionate credit transaction or fraudulent or wrongful trading, if any, shall be pursued after closure of liquidation proceedings and the manner in which the proceeds, if any, from these proceedings shall be distributed;

(g) continuation or institution of any suits or legal proceedings by or against the corporate debtor;

(h) extension of payment of balance sale consideration as provided in clause (12) of Para 1 of Schedule I, beyond ninety days, to be disclosed in the auction notice.

(1A) The committee of creditors under Section 21 shall function as the consultation committee with same voting rights till constitution of the consultation committee under sub-regulation (1).

(2) The voting share of a member of the consultation committee shall be in proportion to his admitted claim in the total admitted claim:

Provided a secured creditor who has not relinquished his security interest under section 52 shall not be part of the consultation committee;

Provided that the promoters, directors, partners or their representatives may attend the meeting of the consultation committee, but shall not have any right to vote.

Provided further that a financial creditor or his representative, if he is a related party of the corporate debtor, shall not have right to vote.

(3) The liquidator may facilitate the stakeholders of each class namely financial creditors in a class, workmen, employees, government departments, other operational creditors, shareholders, partners, to nominate their representative for participation in the consultation committee.

(4) If the stakeholders of any class fail to nominate their representatives, under sub-regulation (3), such representatives shall be

selected by a majority of voting share of the class, present and voting.

(4A) the representative under sub-regulation (3) or (4) shall vote in proportion to the voting share of the stakeholders it represents.

(5) Subject to the provisions of the Code and these regulations, representatives in the consultation committee shall have access to all relevant records and information as may be required to provide advice to the liquidator under sub-regulation (1).

(6) The liquidator shall convene the first meeting of the consultation committee within seven days of the liquidation commencement date and may convene other meetings, if he considers necessary, on a request received from one or more members of the consultation committee:

Provided that when a request is received by the liquidator from members, individually or collectively, having at least thirty three percent of the total voting rights, the liquidator shall mandatorily convene the meeting.

Provided further that the liquidator shall convene subsequent meetings within thirty days of the previous meeting, unless the consultation committee has extended the period between such meetings:

Provided further that there shall be at least one meeting in each quarter.

(6A) In all cases where the liquidator proposes to continue or initiate any legal proceeding, he shall, after presenting the economic rationale for

the proposal, seek the advice of the consultation committee.

(6B) In every meeting, the liquidator shall present to the consultation committee:

(a) the actual liquidation cost along with reasons for exceeding the estimated cost, if any;

(b) the consolidated status of all the legal proceedings; and

(c) the progress made in the process.

(7) The liquidator shall chair the meetings of consultation committee and record deliberations of the meeting.

(8) The liquidator shall place the recommendation of committee of creditors made under sub-regulation (1) of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, before the consultation committee for its information.

(9) The consultation committee shall advise the liquidator, by a vote of not less than sixty-six percent of the representatives of the consultation committee, voting.

Explanation: For the purpose of this sub-regulation, the term "voting" shall mean voting cast by the representatives of the consultation committee.

(10) The advice of the consultation committee shall not be binding on the liquidator:

Provided that where the liquidator takes a decision different from the advice given by the consultation

committee, he shall record the reasons for the same in writing and submit the records relating to the said decision, to the Adjudicating Authority and to the Board within five days of the said decision; and include it in the next progress report.

Explanation.- It is hereby clarified that the requirements of this regulation shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019.

(11) The consultation committee, after recording the reasons, may by a majority vote of not less sixty-six per cent., propose to replace the liquidator and shall file an application, after obtaining the written consent of the proposed liquidator in Form AA of the Schedule II, before the Adjudicating Authority for replacement of the liquidator :

Provided that where a liquidator is proposed to be replaced, he shall-

- (a) continue to work till his replacement; and*
- (b) be suitably remunerated for work performed till his replacement.*

Provided that where a consultation committee under Regulation 31A has been constituted before the commencement of Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022, the liquidator within thirty days of the commencement of the said Regulations, shall reconstitute the consultation

committee as required under the said Regulations and provisions provided under amended Regulation 31A shall come into effect only after such constitution”.

34. It is an admitted fact that during the CIRP process, the Resolution Professional has admitted the applicant in the list of creditors as unsecured Financial Creditor as is evident from the List of Creditors Annexure-F filed with the present application. The applicant having voting share of 76.63% borne CIRP cost to the extent of Rs. 24,80,000/-. The list of creditors Annexure-‘F’ filed with IBBI proves that there was no secured creditor of the CD. The applicant’s voting percentage 76.63% is also proved from the copy of minutes of 11th CoC meeting dated 11.04.2025 Annexure-‘G’.
35. The applicant participated in 1st Meeting of the SCC held on July 10, 2025 through its representative Dr. Nitesh Gupta, Mr. Sanjay Kumar Mohanty and Ms. Aryaa Chatterjee as is evident from minutes of 1st SCC Meeting Annexure-J. Thereafter, the applicant vide email dated July 18, 2025 raised concern about some serious matters. The Liquidator replied through email dated July 26, 2025 raising preliminary defence that SCC has yet not been formed. It is

relevant to refer relevant part of meeting and the same is as under:

Failure to probably constitute SCC-

The SCC is to be constituted within 60 days the liquidation commencement date. This process is still underway, as claims are being collated. The allegation of improper constitution of SCC is pre-matured. So far, I have only held one meeting of the COC members only for introducing myself to the liquidation process, the minutes are self-explanatory which have been circulated with you.

36. Thus, as sub regulation (1) of Regulation 31A as above, the liquidator is bound to constitute a consultation committee, comprising of all creditors of the corporate debtor, within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31. As per Regulation 31A(IA), the committee of creditors under Section 21 shall function as the consultation committee with same voting rights till constitution of the consultation committee under sub-regulation (1).
37. It has clearly been mentioned in ITEM no. 1 of the minutes of 1st SCC Meeting that first meeting of SCC is based on the composition of the erstwhile COC in the CIRP as per Regulation 31A(1A). Therefore, Liquidator has rightly replied that SCC was not constituted in terms of sub

regulation (1) of Regulation 31A of IBBI (Liquidation Process) Regulation 2016.

38. Sub Regulation (2) of Regulation 31A of IBBI (Liquidation Process) Regulation 2016 provides that the voting share of a member of the consultation committee shall be in proportion to his admitted claim in the total admitted claim. The proviso attached to this sub regulation provides that a secured creditor who has not relinquished his security interest under section 52 shall not be part of the consultation committee.
39. The Regulation 21A of IBBI (Liquidation Process) Regulation, 2016 requires the secured creditor of exercising a right in respect of the security interest in the secured asset otherwise the statutory presumption takes effect and a creditor ceases to have any security interest, if such a right is with respect to such security interest is not exercised within 30 days from the liquidation commencement date. In such eventuality, the assets covered under the security interest shall be presumed to be part of the liquidation estate.
40. The applicant submitted its proof of claim in respect of the liquidation of the Corporate Debtor in Form 'D' on 01.08.2025 to the Liquidator under Regulation 18 of

IBBI(Liquidation Process) Regulation 2016. The applicant in support of its claim submitted an agreement dated 15.02.2016 and 26.02.2020 executed between the Corporate Debtor and Financial Creditor, Bank Statements, Claim Calculation Sheet, cancelled cheque and correspondence entered between the Corporate Debtor and Financial Creditor. The applicant in column no. 8 has submitted that with regard to any security held, the liquidator may refer to agreement dated 15.02.2016 and 26.02.2020 executed between the Corporate Debtor and Financial Creditor.

41. It is pertinent to refer to the relevant clause of agreement dated 15.02.2016 with regard to security interest. The same is being reproduced verbatim as under:

Security:

9.1. For the purpose of securing repayment of the said Loan Amount together with interest amount and other amounts becoming payable (hereinafter referred to as the TOTAL INDEBTNESS) the Borrower No. 2, Co-owner and the Kathotia Group and each one of them have agreed that out of the amount to be so lent and advanced as hereinbefore stated the Owner and Kathotia Group shall make payment of the amount due and payable to Sangita Fiscal Services Pvt. Ltd

and others and shall obtain release of the original title deeds in respect of the said part I property of the First Schedule lying deposited with the said Sangita Fiscal Services Pvt. Ltd and others and upon obtaining the same shall hold the same in trust and for the benefit of the Lender for being deposited with the Lender at the office of Mr. R.L Gaggar (Mr. Gaggar) Solicitor & Advocate of No. 6 Old post Office Street, 3rd floor, Kolkata 700 001 for the purpose of creation of an equitable mortgage in respect of the said Property more fully and particularly mentioned and described in Part II of the THIRD SCHEDULE hereunder written (hereinafter also referred to as the CHARGED PROPERTIES).

9.2. For the purpose of creation of an equitable mortgage the Owners shall execute a power of attorney in favour of the nominee of the Lender and by virtue of such Power of Attorney, the said Attorney shall be entitled to take delivery of the original title deeds from Sangita Fiscal Services Pvt. Ltd. and to deposit the same on behalf of the Owners with the Lenders and Power of Attorney shall

not be revoked without the consent of the lender in writing.

9.3. In addition to creation of the said Equitable Mortgage, the Borrower No.2, Co-owners and the Kathotia Group shall also execute a simple mortgage in respect of the said Property and shall cause the same to be registered.

42. The Liquidator, in order to verify the claim of the applicant, sought for documents vide email dated 12.08.2025(Annexure-N). He further sought additional information/documents with revised Form 'D' from the applicant through email dated 14.08.2025. He further submitted that with regard to point no. 8A of the Claim Form 'D', it has been asked whether the applicant wants to relinquish security interest where it is mentioned 'Not Applicable'. The applicant was requested to clarify as to whether the applicant wants to relinquish its security interest or not which will enable the liquidator to proceed with the verification of the claim.

43. The applicant replied to email of the Liquidator qua security interest stating therein that in Form 'D', the applicant have not relinquished the security interest as the assets mortgaged are third-party properties. None of the

assets of the corporate debtor are mortgaged with the applicant. Hence, the question of relinquishment of security interest does not arise in the liquidation process of the Corporate Debtor. It was asked to refer to loan agreements for further clarification. The applicant through another email dated 29.08.2025 further wrote to the applicant that it is noticed that the investment of Corporate Debtors in around 71 Companies is held by the applicant as a security and the applicant has chosen not to relinquish security interest therein.

44. The applicant, in reference to liquidator email dated August 29, 2025, noted that the applicant is an unsecured financial creditor and the same would also be evident from the fact that during CIRP also the applicant was treated as unsecured financial creditor only. It was further stated that it is evident from the records of CIRP that the Corporate Debtor has no secured financial creditor. A screenshot of the IBBI website wherefrom it will appear that the Corporate Debtor does not have any secured financial creditor was forwarded to the Liquidator. It was further appraised that it would be evident from the records of the Corporate Debtor that no charge has been created in the applicant favour and the

applicant has never been categorized as a secured financial creditor.

45. The applicant, with regard to investments of Corporate Debtor in around 71 companies allegedly held by the applicant as a security, it was appraised that through the share certificates of the investments of the Corporate Debtor in some companies (and not 71 companies) were handed over to the applicant by the Corporate Debtor; however, no steps were taken to register the charge either with the ROC or with any other entity reason whereof the applicant cannot be categorized as a Secured Financial Creditor. Regulation 21 of IBBI (Liquidation Process) Regulation 2016 provides as to the documents required to prove the existence of security interest; however, none of the documents mentioned in Regulation 21 exists or are available in the record of any of the entities mentioned in Regulation 21. Therefore, it has rightly been mentioned in Form 'D' in the relevant column that it is not applicable on the applicant as the applicant is an unsecured creditor.

46. The applicant claims that it is an unsecured financial creditor as it has merely the possession of the share certificates of the corporate debtor which were handed over to it and no steps to register the charge was taken. The

applicant also seeks to clarify that properties which were mortgaged belonged to third parties and not to the corporate debtor.

47. On the aspect of power of the liquidator to raise quarry qua relinquishment of secured interest by the Secured Creditor over the Corporate Debtor, Hon'ble NCLAT in case of ***Canara Bank Vs. S. Rajendran(Liquidator) 2024 ibclaw.in 139*** observed in para no. 48 that:

“48. A Liquidator is not to ask the Secured Creditor to relinquish the Secured Interest over the assets of the Corporate Debtor. The Liquidator is not to prefer an ‘Application’, praying for directions to the Secured Creditor, to respond to his request for relinquishment of Security Interest over the Assets of the Corporate Debtor to the Liquidation Estate. On receipt of such notification the Liquidator is to verify the same and permit those ‘Secured Creditors’, to exercise their right, under 52 of the I & B Code, 2016 if they find that they had ‘Security Interest’, over such ‘Assets’. To put it precisely, since the I&B Code, 2016 overrides the ‘SARFAESI Act’, 2002, the Liquidator

*ought not to prefer a petition, based on the
'SARFAESI Act', 2002".*

48. Hon'ble NCLAT in case of *Home Kraft Avenues Vs. Jayesh Sanghrajka (RP) & Ors 2025 ibclaw.in 122 NCLAT* held that in term of Section 78(3) of the Companies Act 2013, it is an obligation upon the Liquidator that in term of Section 78(3) of the Companies Act, 2013, no charge created by the Company shall be taken in account by the "Liquidator" unless it is registered under sub section 1 and 2. The relevant observation of Hon'ble NCLAT in para no. 13 and 18 are as follow:

"13.The intent of the Legislature was never to apply Section 77 of Companies Act upon the 'Corporate Insolvency Resolution Process'. This is for the reason the treatment of "secured creditor" and "security interest" in the liquidation process is entirely different from that of during the 'Corporate Insolvency Resolution Process'. A 'secured creditor' under 'liquidation process' has an indefeasible right to realise its security interest by excluding its assets from the Liquidation Estate per Section 52. In case of 'liquidation' a 'Secured Creditor' who intends to

realise its 'security' outside the 'waterfall mechanism' as per section 53, has to prove that he has a "Charge" over a property. In that case the Liquidator has to 'recognise a charge' which is "registered as per section 77 of Companies Act". Further, the definition of "Liquidation Estate" under 36(3) (g) includes 'secured assets' only and only if the 'secured creditor' has relinquished its interest. Distinctively, Section 18 (1) (f) and 25 (2) (a) mandates the Resolution Professional to take control of 'all assets' of the Corporate Debtor irrespective of any encumbrance. Further, no secured creditor has right to 'realise' its 'security interest' during 'CIRP'".

18. This is in consonance with Section 77 of the Companies Act 2013. Section 78(3) of the Companies Act, 2013 states no charge shall be created by the Company shall be taken in account by the "Liquidator" unless it is registered under sub section 1 and 2. Section 77 (4) of the Companies Act, 2013 clarifies nothing in subsection (c) shall prejudice any contract or obligation for repayment of money secured by charge. The obligation is only

on the Liquidator. In fact, Section 3 (4) of IBC defines charge and Section 3 (31) of IBC states secured interest means and includes "Charge". Thus, combine reading of all the section clarifies only a Liquidator will not consider a claim without registration, however, the RP is bound to consider a "Charge" and a Creditor having charge is a Secured Creditor".

49. The applicant had been recognised as an unsecured Financial Creditor by the Resolution Professional during the CIRP process and included in the list of creditors as is evident from the List of Creditors Annexure-F filed with the present application. The applicant having voting share of 76.63% borne CIRP cost to the extent of Rs. 24,80,000/- which is not disputed by the Liquidator. The list of creditors Annexure-‘F’ filed with IBBI proves that there was nil secured creditor of the Corporate Debtor. The applicant’s voting percentage 76.63% is also proved from the copy of minutes of 11th CoC meeting dated 11.04.2025 Annexure-‘G’.

50. Therefore, in view of the above and law applicable thereon, we are of the view that the applicant is unsecured Financial Creditor and accordingly, we set aside the decision taken by

Case Citation: (2026) ibclaw.in 2363 NCLT
IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 1674/KB OF 2025
IN
C.P. (IB) No. 264/KB OF 2022

the Liquidator as communicated vide email dated August 29,2025. The Liquidator is hereby directed to include the applicant as member of the Stakeholders' Consultation Committee.

51. Consequently, the IA. (I.B.) 1674/KB of 2025 stands allowed and disposed of with no order as to cost.

52. A copy of this order be supplied to parties as per applicable Rules.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)

T.Roy (LRA)