IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH -I

IA IBC 2160/2026

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

ASREC (India) Limited

… Applicant

Versus

Precision Fasteners Limited through Liquidator – Mr. Divyesh Desai

... Respondents

In the matter of

CP (IB) No. 1339/MB/2017

ASREC (India) Limited

... Financial Creditor

Versus

Precision Fasteners Limited

… Corporate Debtor

Order pronounced on : 11.08.2026

Coram:

Sh. Prabhat Kumar Hon'ble Member (Technical)

Sh. Sushil Mahadeorao Kochey Hon'ble Member (Judicial)

Appearances:

For the Applicant : Somesh Talla i/b Adv. Vaishali Bhilare

For the Respondent : Mr. Ashish Parwani, Adv. Gitika Makhija i/b Rajani Associates

ORDER

Per: Coram

1. The present Interlocutory Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("the Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 by the Applicant, ASREC (India) Limited, having its Head Office at Solitaire Corporate Park, Building No. 2, Unit Nos. 201–202A & 200–202B, Ground Floor, Andheri-Ghatkopar Link Road, Chakala, Andheri (East), Mumbai – 400093, against Mr. Divyesh Desai, Liquidator of Precision Fasteners Limited, having his office at B2-402B, Marathon Innova, Ganpatrao Kadam Marg, Lower Parel, Mumbai – 400013 ("Respondent"), seeking the following reliefs:

   (a) Allow the present Application and direct the Respondent-Liquidator to re-distribute the sale proceeds amongst the creditors in accordance with Section 53 of the Code, without discriminating between secured creditors;

   (b) Direct an audit of the entire distribution process undertaken for distribution of the sale proceeds of the Corporate Debtor, namely Precision Fasteners Limited;

2. The Applicant is a company incorporated under the provisions of the Companies Act, 1956. It is also registered as a Securitisation and Reconstruction Company under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Applicant claims to be the successor-in-interest of the

original lender, Bank of Baroda, by virtue of a Deed of Assignment dated 25.03.2014.

3. The Respondent, Mr. Divyesh Desai, is the Liquidator of Precision Fasteners Limited ("Corporate Debtor"). Vide order dated 07.11.2017, this Tribunal admitted the application against the Corporate Debtor and initiated the Corporate Insolvency Resolution Process ("CIRP"). As no resolution plan was approved during the CIRP, the Corporate Debtor was ordered to be liquidated by this Tribunal vide order dated 12.03.2018.

Submissions of the Applicant

4. Applicant submitted that the Applicant's debt is secured by a second charge over the immovable/fixed assets and a first charge over the current/movable assets of the Corporate Debtor. The Applicant's share amongst the working capital lenders is stated to be 18.8% of the total dues of the working capital consortium. Applicant further submitted that its admitted claim amounts to ₹145,72,76,000/- and as per the distribution proposal prepared by the Liquidator, the Applicant is expected to receive only ₹31,65,394/-.
5. It is further submitted that, upon examining the calculation sheet circulated by the Liquidator through email dated 09.07.2025 explaining the proposed distribution of sale proceeds amongst the secured creditors, the Applicant came to know that the second charge holders had not been allocated any portion of the sale proceeds realized from the immovable assets and the second charge holders have been allotted proceeds only from the sale of movable assets.
6. It is further submitted that, after the year 2010, all the lenders had agreed to distribute the recoveries in the ratio of 70:30, which was subsequently revised to 80:20. However, despite all secured creditors having relinquished their security interests, the Liquidator created a distinction between first charge holders and second charge holders while distributing

the sale proceeds.

7. It is contended that, on account of such distinction, the Applicant did not receive any share from the sale proceeds of the immovable assets. The Applicant further alleges that the Liquidator failed to distribute the proceeds in accordance with Section 53 of the Code and did not keep the secured creditors adequately informed regarding the basis of such distribution.
8. According to the Applicant, since all the lenders had relinquished their respective security interests to the liquidation estate, they stood on an equal footing as secured creditors under Section 53 of the Code. Consequently, no distinction could have been made between first charge holders and second charge holders while distributing the sale proceeds.
9. In support of its submissions, the Applicant has relied upon the decision of the NCLAT in ***Oriental Bank of Commerce v. Anil Anchalia, 2022 ibclaw.in 392 NCLAT***, to contend that once a secured financial creditor relinquishes its security interest to the liquidation estate, it cannot claim priority over other secured creditors in the distribution of sale proceeds. It is submitted that, upon relinquishment of security, every secured financial creditor becomes entitled only to a pro rata share of the sale proceeds in accordance with the waterfall mechanism prescribed under Section 53 of the Insolvency and Bankruptcy Code, 2016.
10. On the aforesaid grounds, the Applicant has filed the present Interlocutory Application seeking directions to the Respondent-Liquidator to re-distribute the sale proceeds amongst the secured creditors strictly in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016.

Submission of the Respondent:

11. Learned Counsel for the Respondent submitted that, prior to filing the present Application, the Applicant had instituted M.A. No. 520 of 2019 before this Tribunal seeking, inter alia, substantially similar reliefs. The

said Miscellaneous Application came to be dismissed by this Tribunal. Aggrieved thereby, the Applicant preferred Company Appeal (AT) (Ins.) No. 303 of 2020 before the Hon'ble National Company Law Appellate Tribunal ("NCLAT"), wherein the Hon'ble Appellate Tribunal directed this Tribunal to pass a reasoned order. Pursuant thereto, the Applicant sought restoration of M.A. No. 520 of 2019 before this Tribunal, which was subsequently disposed of after hearing the parties vide order dated 16.01.2025. Thereafter, the Applicant again approached the Hon'ble NCLAT by filing Company Appeal (AT) (Ins.) No. 382 of 2025 challenging the order passed in the restoration proceedings. The Hon'ble NCLAT, vide order dated 08.07.2025, once again affirmed the order passed by this Tribunal. It is, therefore, contended that having unsuccessfully pursued the matter before multiple judicial fora, and the earlier proceedings having attained finality, the Applicant cannot seek to reopen the same controversy by filing the present Application seeking substantially identical reliefs. Accordingly, the Respondent has raised a preliminary objection that the present Application is barred by the principles of res judicata.

12. It is further submitted that, at all material times, the Applicant was fully aware that no consensus had ever been arrived at amongst the members of the Joint Lenders' Forum during the pre-CIRP period regarding the inter-se distribution of securities in the ratio of 70:30 or 80:20. According to the Respondent, the Applicant is merely seeking to re-agitate issues which were well within its knowledge and which have already been adjudicated upon in the earlier proceedings before this Tribunal as well as the Hon'ble Appellate Tribunal.

13. The Respondent further submitted that the Applicant had actively participated in the meetings and deliberations of the Joint Lenders' Forum as well as the Stakeholders' Consultation Committee and was marked in all relevant email communications. It is contended that M.A. No. 520 of

2019 had been filed on the very premise that the Applicant, being a second charge holder over the fixed assets of the Corporate Debtor, was not being allocated any share from the sale proceeds of the immovable assets and was receiving proportionate distribution only from the sale proceeds of the movable assets. The Respondent further pointed out that the distribution mechanism itself had been annexed as Exhibit D to the said Miscellaneous Application by the Applicant. It is, therefore, submitted that, having failed to obtain relief in respect of its claim for distribution in the ratio of 70:30 or 80:20, the Applicant has now approached this Tribunal by projecting the issue as one concerning distribution under Section 53 of the Code, in an attempt to create an artificial distinction and portray the present cause of action as a fresh dispute, although the substantive relief sought remains identical.

14. The Respondent further submitted that, as per Form D submitted by the Applicant before the Liquidator, the Applicant's loan facilities were secured only by a second charge over the fixed assets of the Corporate Debtor situated at Kalwa, Silvassa and Mahad. The Applicant did not possess any first charge over the said immovable properties.

15. It is further submitted that, in terms of Section 53 of the Insolvency and Bankruptcy Code, 2016, read with the recommendations of the Insolvency Law Committee Report dated 26.03.2018, the sale proceeds realised from a secured asset are required to be distributed, in the first instance, amongst the first charge holders of the respective asset. Only the surplus, if any, remaining after satisfaction of the claims of the first charge holders, can be distributed to the second charge holders. According to the Respondent, this priority of charges is also recognised under Section 48 of the Transfer of Property Act, 1882, and finds support in the Insolvency Law Committee Reports of 2018 and 2020.

Findings:

16. We have heard the Learned Counsel appearing for the parties and perused

the material available on record.

17. It is pertinent to note that the Applicant had earlier filed **M.A. No. 520 of 2019**, wherein, inter alia, the following reliefs were sought:

(b) That the Liquidator be directed to follow the waterfall mechanism under Section 53 of the Insolvency and Bankruptcy Code, 2016 for distribution of the liquidation proceeds amongst the lenders.

(c) That the Liquidator be further directed to give effect to the consensus allegedly arrived at between the term lenders and the working capital lenders for distribution of the sale proceeds in the ratio of 70:30 and, accordingly, distribute to the Applicant its alleged share amounting to ₹3.06 crore.

18. The said M.A. No. 520 of 2019 was disposed of by this Tribunal vide order dated **02.12.2019**. The relevant observations contained therein are reproduced below for ready reference:

"*Heard the issue based on the Agreement between the lenders, Secured Creditors way back in 2011, according to them they want to enforce the same in the distribution of funds available with the Liquidator. The Act is very clear. If at all they have any issue to be adjudicated, they should first approach the Liquidator. After the Liquidator adjudicates on the same, and if they still have any grievance, the same can be adjudicated before this Bench. The first point that falls for consideration before this Bench is whether the second charge holder has any right to claim priority over the first charge holder. This question has already been answered by the Court, and the Liquidator was directed to distribute the funds strictly adhering to the ratios as arrived at by him for the first charge holders as per the Code. If at all any grievance remains on the part of the second charge holders, they may approach the competent Court, but they have no authority to approach this Bench. M.A. No. 520 of 2019 is disposed of accordingly.*"

19. Aggrieved by the aforesaid order, the Applicant preferred Company Appeal (AT) (Ins.) No. 303 of 2020 before the Hon'ble National Company

Law Appellate Tribunal ("NCLAT"). Vide order dated 05.08.2020, the Hon'ble NCLAT set aside the order and remanded the matter to this Tribunal with a direction to pass a reasoned and speaking order dealing with the prayers made in M.A. No. 520 of 2019.

20. Pursuant to the remand, M.A. No. 520 of 2019 was heard afresh and disposed of by this Tribunal vide order dated 16.01.2025. While rejecting the Applicant's contention regarding the alleged sharing ratio, this Tribunal observed as under:

"*23. In view of the above, it is clearly discernible that the first charge holders had not agreed to the distribution in terms of the ratio as submitted by the Applicant and that the proposition remained only a proposal. Hence, in the absence of any mutually agreed arrangement amongst the lenders for distribution of the sale proceeds in any other manner, the proceeds have to be distributed in terms of Section 53 of the Code after taking into account the inter se priorities as held in the preceding paragraphs.*"

21. The aforesaid order dated 16.01.2025 was again challenged before the Hon'ble NCLAT in Company Appeal (AT) (Ins.) No. 382 of 2025. Vide order dated 08.07.2025, the Hon'ble Appellate Tribunal directed that the expression *"after taking into account the inter se priorities as held in the preceding paragraphs*" occurring in paragraph 23 of the order dated 16.01.2025 be read down. Consequently, the Hon'ble NCLAT clarified that the sale proceeds are required to be distributed strictly in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016. Hence, the issue in relation to distribution of proceeds attained finality in this matter, as no appeal was filed against the said order dated 16.01.2025.

22. In the present Application, the Applicant seeks a direction to the Respondent-Liquidator to re-distribute the sale proceeds amongst the secured creditors in accordance with Section 53 of the Code, without discriminating between first charge holders and second charge holders.

The principal grievance of the Applicant is that the Respondent-Liquidator, while distributing the liquidation proceeds, accorded priority to the secured creditors holding the first charge over the assets of the Corporate Debtor and allocated the balance proceeds, if any, to the Applicant, which holds only a second charge over the said assets.

23. It is the Applicant's case that, as per the details of the distribution furnished by the Respondent, the sale proceeds of the immovable assets of the corporate debtor have been distributed only amongst the secured creditors holding a first charge over the respective assets and to the exclusion of Secured creditors who are holding second charge over such assets. Thus, applicant graves that the Respondent has, in effect, sought to create a sub-classification within the class of secured creditors contemplated under Section 53 of the Insolvency and Bankruptcy Code, 2016, by according priority to first charge holders over second charge holders, instead of distributing the proceeds amongst all secured creditors on an equal and proportionate basis in terms of Section 53 of the Code.

24. Although the issue relating to the distribution of liquidation proceeds in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016 had been litigated on two earlier occasions before this Tribunal, and both this Tribunal as well as the Hon'ble National Company Law Appellate Tribunal have held that, in the absence of any *inter se* agreement amongst the creditors, the sale proceeds are required to be distributed strictly in accordance with Section 53 of the Code. However, the specific question as to whether the liquidation proceeds are to be distributed *inter se* amongst all secured creditors in proportion to value of their claim or value of their security interest was neither raised nor conclusively adjudicated in the earlier proceedings. Consequently, the present Application, insofar as it raises the aforesaid issue, cannot be held to be barred by the principles of *res judicata*.

25. The Applicant has placed reliance upon the decisions of the ***Hon'ble NCLAT in Technology Development Board v. Anil Goel & Ors***., Company Appeal (AT) (Insolvency) No. 731 of 2020, and ***Oriental Bank of Commerce v. Anil Anchalia, 2022 ibclaw.in 392 NCLAT***. The Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") has held in ***Technology Development Board v. Anil Goel & Ors. [Company Appeal (AT) (Insolvency) No.731 of 2020]*** that secured creditors who release their security interest during liquidation under Section 53 of the Insolvency & Bankruptcy Code, 2016, do not receive inter-se priority. The relevant paragraph from the judgement is reproduced below-

> *"22. The NCLAT has also held in Oriental Bank of Commerce v. Anil Anchalia [Comp. App. (AT) (Ins.) No. 547 of 2022] that this issue is no longer res integra in view of the judgment of the Hon'ble Supreme Court in India Resurgence ARC Private Limited v. Amit Metaliks Limited & Anr. [2021 SCC OnLine SC 409], and held that upon relinquishment of their security interest, the secured creditors of a corporate debtor cannot exclusively claim any amount realised from the secured assets and would be governed by the waterfall mechanism under Section 53 of the Code. However, we find that the decision in India Resurgence ARC (supra) was rendered in the context of a Corporate Insolvency Resolution Process (CIRP). Accordingly, the said decision is not applicable to the facts of the present case.*
>
> *23. We are also cognizant of the fact that appeals have been preferred before the Hon'ble Supreme Court against the judgments of the Hon'ble NCLAT in Technology Development Board v. Anil Goel & Ors. and Oriental Bank of Commerce v. Anil Anchalia. The said appeals are presently pending adjudication. It is also noted that the operation of the judgment in Technology Development Board (supra) has been stayed, while the appeal*

arising out of Oriental Bank of Commerce (supra) has been tagged with the former matter."

26. It is noted that the Hon'ble Supreme Court in India Resurgency (Supra) held that "*17. Thus, what amount is to be paid to different classes or subclasses of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest*". This decision was referred to larger Bench in case of ***DBS Bank Ltd. Singapore v. Ruchi Soya Industries Ltd. and Anr., <u>(2024) ibclaw.in 01 SC</u>, wherein the Hon'ble Supreme Court held*** "***31.*** *We believe that there is a contradiction in the reasoning given in the judgment of this Court in* **India Resurgence ARC Private Limited** *(supra), which is in discord with the ratio decidendi of the decisions of the three Judge Bench in* ***Committee of Creditors of Essar Steel India Limited*** *(supra) and* ***Jaypee Kensington*** *(supra).*", accordingly, the Hon'ble Supreme Court said that "*we are taking a different view and ratio from* India Resurgence ARC Private Limited *(supra) on interpretation of Section 30(2)(b)(ii) of the IBC, we feel that it would be appropriate and proper if the question framed at the beginning of this judgment is referred to a larger Bench*."

27. Though, the latest legal position in relation to distribution of proceeds between class of secured creditors in terms of Section 53 of IBC continued to be that such proceeds are to be distributed in proportion of value of claims of the secured creditors u/s 53(1)(b)(ii) as the decision in the appeal(s) against the order(s) of Hon'ble NCLAT in case of Technology Development Board v. Anil Goel & Ors. and Oriental Bank of Commerce v. Anil Anchalia are still pending. According it can not be said that the issue in relation to such distribution attained finality that the proceeds have to be distribution in in proportion of value of their claim.

28. It is an admitted position that the Respondent-Liquidator has distributed the sale proceeds in accordance with the waterfall mechanism prescribed under Section 53 of the Insolvency and Bankruptcy Code, 2016. The grievance of the Applicant is confined to the manner in which the sale proceeds were distributed *inter se* amongst the secured creditors, namely, that the secured creditors holding the first charge over the assets were accorded priority over the Applicant, which held only a second charge.

29. It is noted that an Explanation has been inserted in Section 53(1)(b) w.e.f. 26.05.26 providing that –

> "*For the removal of doubts, it is hereby clarified that where the value of the security interest relinquished by the secured creditor is less than the total debt owed to such secured creditor by the corporate debtor, he shall be a secured creditor to the extent of the value of such security interest, determined in such manner as may be specified, and for the remaining value of such debt, he shall be considered to be an unsecured creditor".*

30. The question arises whether the said explanation is retrospective in its effect as, generally, the explanation in the nature of clarifications is held to be retrospective in its operation.

31. In case of ***Sree Sankaracharya University of Sanskrit v. Manu, 2023 SCC OnLine SC 640***, the Hon'ble Supreme Court considered the issue "*whether the Government Order dated 29th March, 2001 to the extent that it modifies the Government Order dated 21st December, 1999 would be applicable to those lecturers who had acquired a Ph.D. degree at the time of their recruitment, such as, Respondent No. 1, who were placed in the selection grade before 29th March, 2001*". The Hon'ble Court took note of ***State of Bihar v. Ramesh Prasad Verma, (2017) 5 SCC 665***, the extract from the treatise, ***Principles of Statutory Interpretation, 11th Edition (2008) by Justice G.P. Singh*** on the sweep of a clarificatory/declaratory/explanatory provision, ***Commissioner of Income***

Tax, Bombay vs. Podar Cement Pvt. Ltd., (1997) 226 ITR 625 (SC) , and ***Allied Motors Pvt. Ltd. vs. Commissioner of Income Tax, Delhi, (1997) 224 ITR 677 (SC).*** In case of Sree Sankaracharya (Supra), it is held that, in order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous, and it is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it. The Hon'ble Court quoted the following excerpts from treatise of Justice G.P. Singh :

> *"The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court: For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any Statute. Such acts are usually held to be retrospective.*
>
> *[...] An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended. The language 'shall be deemed always to have meant' or 'shall be deemed never to have included' is declaratory and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force, the amending Act also will be part of the existing law." [Emphasis by us]*

32. After considering the relevant law, the Hon'ble Supreme Court culled out the following principles:

i. If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.

ii. In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.

iii. An explanation/clarification may not expand or alter the scope of the original provision.

iv. Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.

33. It is also noted that in case of ***Shri Prithvi Cotton Mills Ltd. & Anr vs Broach Borough Municipality & Ors (1) [1954] 2 S.C.R. 608, Hon'ble Supreme Court*** said that ***"****Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances****".*** The said observation of the Hon'ble Supreme

Court were made while examining retrospective application of a Validation Act enacted by the legislature, and the Hon'ble Court finally said that *If the legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions.* Accordingly, the aforesaid observation that the legislature does not possess reversing the decision in exercise of judicial power were made with a caveat that if the legislature has competence to levy a tax, it can do so by Validation Act also even if reverses the earlier judicial decision.

34. Coming to the Explanation, it is noted that the said Explanation seeks to clarify that a secured creditor, who has relinquished security interest shall be a secured creditor to the extent of the value of such security interest, determined in such manner as may be specified, and for the remaining value of such debt, he shall be considered to be an unsecured creditor. Indubitably, there is no quarrel to legislative competence on this issue. The clause 2 of Notes on Clauses to The Insolvency And Bankruptcy Code (Amendment) Bill, 2025 sets the background of said amendment, which reads as follows :

> "*Clause 32 of the Bill seeks to insert an explanation in sub-clause (ii) of clause (b) of sub-section (1) of Section 53 of the Code to clarify that in cases where the value of the security interest that secured creditor has relinquished to the liquidation estate is less than the total debt that the corporate debtor owes to that secured creditor, such secured creditor will be considered a secured creditor to the extent of the value of such security interest. The Board will specify the manner of determining the value of the security interest. For the remaining value of such debt, it shall be considered an unsecured creditor.*"

35. The 2018 Insolvency Law Committee Report had considered this issue

and reported the following-

> *"21.2 It was suggested that the possibility of the phrase "shall rank equally between and among" in section 53(1)(b) to be interpreted to mean that debts inter-se secured creditors in clause (ii) of section 53(1)(b) would also rank equally cannot be excluded. Such an interpretation would imply that priority of charges agreed upon between creditors in inter-creditor or subordination agreements would lose meaning once a creditor relinquished its security and came within the liquidation waterfall in section 53.*
>
> *21.3 However, it was stated to the Committee that in practice, subordination agreements inter-se creditors were respected in winding up proceedings. This was also stated to be the position in other developed countries. Specifically, it was also brought to the Committee's attention that in USA, the Bankruptcy Code (11 US Code § 510 read with 11 US Code § 726.) states that in case of liquidation, "a subordination agreement is enforceable in a case under this title to the same extent that such agreement is enforceable under applicable non bankruptcy law." Further, the Committee was appraised of the case of ICICI Bank Limited v. SIDCO Leathers Limited & Ors. 9 (2006) 10 SCC 452 wherein the Hon'ble Supreme Court interpreted sections 529 and 529A of the CA 1956 which deal with ranking of claims on liquidation. It was held in this case that, "Only because the dues of workmen and debts due to the secured creditors are treated pari passu with each other, the same by itself, in our considered view, would not lead to the conclusion that the concept of inter se priorities amongst the secured creditors had thereby been intended to*

be given a total go-by." Certain other relevant principles that emerge from this case are as follows:

(a) Right to property was a constitutional right and right to recover money lent by enforcing a mortgage was also a right to enforce an interest in the property. Had the Parliament intended to take away such a valuable right of the first-charge holder, there was no reason for it to not state so explicitly.

(b) Section 48 of the Transfer of Property Act, 1882 ("TOPA") clearly provides that claim of a first charge holder shall prevail over the claim of a second charge holder.

(c) Merely because the relevant section did not specifically provide for the rights of priorities over mortgaged assets, it would not mean that the provisions of section 48 of TOPA shall stand obliterated in relation to a company that has undergone liquidation.

(d) Deprivation of a legal right existing in favour of a person cannot be presumed in construing a statute and it is in fact the other way round and thus, a contrary presumption shall have to be raised.

(e) Companies Act may be a special statute but if the special statute does not contain any provisions dealing with contractual and other statutory rights between different secured creditors, the specific provisions contained in the general statute shall prevail.

(f) Section 529(1)(c) used the phrase "the respective rights of secured and unsecured creditors." This was to be interpreted as rights of secured creditors vis-à-vis unsecured creditors. It does not envisage respective rights amongst secured creditors.

21.4The Committee felt that the principles stated above that emerge from the ICICI case are also applicable to the issue at hand under section 53 of the Code. Moreover, although this was a case where creditors had not relinquished their security, the principles hold good under the Code even when creditors have relinquished their security as the Code unlike the CA 1956 expressly recognises secured creditors who have relinquished their security as a separate category in section 53(1)(b)(ii) and distinguishes them from unsecured creditors. The Code in a bid to encourage relinquishment, also specifically places secured creditors who have relinquished security higher than unsecured creditors.

21.5Lastly, it was deliberated whether inter-creditor agreements if not disregarded for the liquidation waterfall in section 53 of the Code, may result in secured creditors, especially those holding a first charge to prefer liquidation over resolution. It was suggested to the Committee to clarify whether inter-creditor agreements hold good for distribution of proceeds on liquidation under section 53 in order to promote resolution over liquidation. The Committee, as discussed in the context of the ICICI case above, noted that it may not be prudent to take away a valuable property right vested with creditors. The Committee felt that generally all secured financial creditors whether first charge or secondary charge holders are sophisticated entities which grant loans after exercising due-diligence and are presumed to be able to evaluate their interests and risks sufficiently. Moreover, this may negatively impact the credit market and discourage banks and other financial creditors to grant big loans which are more often than not granted against property or other *valuable collateral as they shall have no protection in case the corporate debtor becomes insolvent. Accordingly, the Committee disregarded this suggestion.*

21.6 *To conclude, the Committee was of the opinion that it is sufficiently clear from a plain reading of section 53(1)(b) that it intended to rank workmen's dues equally with debts owed to secured creditors who have relinquished their security. Section 53(1)(b) does not talk about priority inter-se secured creditors. Thus, valid inter-creditor/subordination agreements would continue to govern their relationship. Further sub-section (2) of section 53 must also be interpreted accordingly. For instance, applying section 53(2) in the context of section 53(1)(b), any agreements between workmen and secured creditors which disrupts their pari passu rights will be disregarded by the liquidator. However, agreements inter-se secured creditors do not disturb the equal ranking sought to be provided by section 53(1)(b) and therefore do not fall within the ambit of section 53(2).* ***The Committee felt that there was no requirement for an amendment to the Code required since a plain reading of section 53 was sufficient to establish that valid inter-creditor and subordination provisions are required to be respected in the liquidation waterfall under section 53 of the Code."***

36. This interpretation of Section 53 of the Code regarding treatment of inter se priorities in the liquidation waterfall mechanism was also supported by the Insolvency Law Committee Report 2020 wherein it was reiterated that this issue does not necessitate any further amendment to the provisions of the Code. The relevant part is reproduced hereunder:

7.3 The Committee noted that the Code aims to promote a *collective liquidation process, and towards this end, it encourages secured creditors to relinquish their security interest, by providing them second-highest priority in the recovery of their dues, as under Section 53(1)(b). Thus, they are not treated as ordinary unsecured creditors under the Code, as they would have been under the Companies Act, 1956. It was noted that, to some extent, this provision intends to replicate the benefits of security even where it has been relinquished, in order to promote overall value maximisation. However, even if secured creditors realise their security interest, they would only recover to the extent of their security interest, and would claim any excess dues remaining unpaid under Section 53(1)(e) of the liquidation waterfall. Thus, the Committee was of the view that this provision could not have been intended to provide secured creditors who relinquish their security interest, priority of repayment over their entire debt regardless of the extent of their security interest, as it would tantamount to respecting a right that has never existed. Further, if the "debts owed to a secured creditor" is not restricted to the extent of the security, there would be broad scope for misuse of the priority granted under Section 52(1)(b), as even creditors who are not secured to the full extent of their debt would rely on the mere fact of holding any form of security, to recover the entire amount of their unpaid dues in priority to all other stakeholders.*

7.4. ***On the basis of the above discussion, the Committee agreed that the priority for recovery to secured creditors under Section 53(1)(b)(ii) should be applicable only to the extent of the value of the security interest that is relinquished by the secured creditor. The Committee was of the opinion that this issue stands clarified in terms of the reasoning provided above and does not necessitate any further amendment to the provisions of the***

Code.

37. It follows that the Explanation inserted w.e.f. 26.5.2026 only clarifies what the provision of Section 53(1)(b)(ii), in relation to inter-se priority, intended to mean from its very inception.

38. It is in this context; it is relevant to refer the decision of the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") has held in ***Technology Development Board v. Anil Goel & Ors. [Company Appeal (AT) (Insolvency) No.731 of 2020]*** holding that secured creditors who release their security interest during liquidation under Section 53 of the Insolvency & Bankruptcy Code, 2016, do not receive inter-se priority distinguishing the Hon'ble Supreme Court decision in case of ***ICICI Bank vs. Sidco Leathers Ltd. & Ors. (2006) 10 SCC 452***. The relevant paragraph from the judgement is reproduced below-

> *"10. In "ICICI Bank vs. Sidco Leathers Ltd. & Ors. (2006) 10 SCC 452", the Hon'ble Apex Court, while taking note of Section 48 of Transfer of Property Act, observed that the claim of first charge holder shall prevail over the claim of the second charge holder and where debts due to both the first charge holder and the second charge holder are to be realised from the property belonging to the mortgager, the first charge holder will have to be repaid first. The Hon'ble Apex Court observed that while enacting the Companies Act parliament cannot be held to have intended to deprive the first charge holder of the said right. Such a valuable right must be held to have been kept preserved. It referred to an earlier judgment titled 'Workmen of Firestone Tyre and Rubber Company of India vs. Management & Ors.' observing that if such valuable right of first charge holder was intended to be taken away, Parliament, while amending the Companies Act would have*

stated so explicitly. The view taken by the Adjudicating Authority on the basis of judgment of Hon'ble Apex Court in "ICICI Bank vs. Sidco Leathers Ltd. (supra)" (which is pre-IBC), ignoring the mandate of Section 53 of I&B Code which has an overriding effect and came to be enacted subsequent to the aforesaid judgment rendered by Hon'ble Apex Court explicitly excluding operation of all Central and State legislations having provisions contrary to Section 53 of I&B Code, is erroneous and cannot be supported.

11. For the foregoing reasons the impugned order holding that the inter-se priorities amongst the Secured Creditors will remain valid and prevail in distribution of assets in liquidation cannot be sustained."

39. It is clear from the aforesaid decision that the Hon'ble NCLAT held the distribution of proceeds in proportion of value of claims of the secured creditors observing that Section 53 of IBC has over-riding effect as IBC explicitly excludes operation of all Central and State legislations having provisions contrary to Section 53 of I&B Code.

40. As is observed, the interpretation of Section 53(1)(b) holding that the distribution amongst the Secured Creditor, who have relinquished their security interest shall be in proportion of value of their claim, has still not attained finality and insolvency law committee report had consistently arrived at a conclusion that the inter-se priority of security interest of the secured creditor should be respected, which was also the law laid down in the case of *ICICI Bank vs. Sidco Leathers Ltd. & Ors. (supra)* while interpreting such distribution in winding up under the Companies Act. Further, the decision of Hon'ble NCLAT in case of Technology Development Board (supra) and ***Anil Anchalia*** is stayed in an Appeal against those decisions pending before Hon'ble Supreme Court. It follows from these propositions the pre-amended law was vague or ambiguous

necessitating such clarification so as to read the unamended law in its true spirit and purport, which had unintended consequence of treating the superior charge created in favour of a secured creditor with the subordinate charge of another creditor on equal footing. Since the secured creditors had consciously agreed for subordinate charge while obtaining the security interest, it cannot be said that the said amendment impinge upon or take away their vested rights in the liquidation proceeds. Accordingly, in our considered view the insertion of explanation in Section 53(1)(b) is clarificatory in nature and is to be read retrospectively.

41. In view of the foregoing discussion, and for the reasons recorded hereinabove, we hold that the distribution adopted by the Respondent-Liquidator is in consonance with Section 53 of the Insolvency and Bankruptcy Code, 2016, read with the applicable principles governing the *inter se* priority of secured creditors. Consequently, the prayer seeking a direction to the Respondent-Liquidator to re-distribute the sale proceeds amongst the secured creditors in accordance with Section 53 of the Code, without distinguishing between first charge holders and second charge holders, cannot be granted.

42. Accordingly, **I.A. (IBC) No. 2160 of 2026** stands **dismissed**. There shall be no order as to costs.

Sd/- | **Sd/-**

Prabhat Kumar
Member (Technical)

Sushil Mahadeorao Kochey
Member (Judicial)

Vijay Andhale