IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/ VC Mode (Hybrid)

ITEM No.03
IA 388/21, 316/2022, 28/2023, 311/2023
Contempt Petition (IBC) 03/2024
IA(IBC) 641/2025, 539/2026
879/2026, 933/2026, 935/2026
CP(IB)No. 189/BB/2018

IN THE MATTER OF:

M/s Moonbeam Advisory Pvt Ltd … Petitioner

Vs.

M/s Sammrudhi Reality Ltd … Respondent

Petition under Sec 9 of I&B code 2016

Order delivered on: 23.09.2026

CORAM:

SHRI. SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI. RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

COUNSELS PRESENT:

For the Liquidator	: Adv. Harikrishna Pramod & Adv. Aishwarya V Ravindranath
For the App in IA 641	: Adv. Akanksh Ashok
For App in IA 388& 316	: Adv. Varsha Jain
The Liquidator	: Shri. Liquidator
For R-6 in IA 28/2022	: Adv. Aparna Kulkarni
For IT Department	: Adv. Ganesh Ghale

ORDER

1. Heard the Ld. Counsels for parties.
2. **IA 388/2021 and IA 316/2022**.

   Both the applications are **dismissed** vide separate common order.
3. **Cont. P 03/2024.**

   It is stated on behalf of the liquidator that the application had been moved against the neighbour of CD estate. Now not much is left to be pursued in this application as the said estate has been auctioned. In view of the submission the Contempt Petition is **disposed of as not pressed.**
4. **IA (IBC) 641/2025.**

   Arguments on the application have been heard. **List on 27.10.2026 for orders**.
5. **IA (IBC) 539/2026.**

   Although not stated on the last date, yet Ld. Counsel for IT department claims to have not received the copy of application from the department and sought one from the other side. Ld. Counsel for Liquidator has consented to forward another copy to him today itself. Let him file reply in 2 weeks by way of last opportunity, the applicant may file rejoinder, if any, in another 2 weeks with copies to Sh. Ghale.
6. **IA (IBC) 879/2026**.

   This Application has been filed seeking exclusion for the period starting from 31st March 2026 till 19th June 2026 on account of inadvertent delay in assuming charge as the liquidator of the Corporate Debtor by the applicant.

   Considering that the present Liquidator could assume charge only on 19.06.2026 and that no effective activity in furtherance of the liquidation could be carried out during the intervening period, and having regard to the approval accorded by the Committee of Creditors, the period from **31.03.2026 to 19.06.2026** is hereby **excluded** from the computation of the liquidation period. Accordingly, **IA (IBC) 879/2026 is allowed**.
7. **IA (IBC) 933/2026.**

This Application has been filed seeking condonation of delay in seeking extension of the period of liquidation and consequently, permit the extension of liquidation period for 275 days from 31.03.2026 till 31.12.2026.

The delay has been attributed to the circumstances surrounding the replacement of the erstwhile Liquidator, the assumption of charge by the present Liquidator, reconstitution of the Committee of Creditors and the time taken thereafter to obtain the requisite approval. Having regard to the facts and circumstances of the case and the reasons set out for the delay, the **delay of 160 days in filing the application is hereby condoned**. Accordingly, **IA (IBC) 933/2026 is allowed**.

8. **IA (IBC) 935/2026.**

This application has been filed seeking extension of liquidation period for 275 days from 31.03.2026 till 31.12.2026. Considering the nature of the pending activities and the requirement of further time for completion of the liquidation process, and taking note of the approval accorded by the Committee of Creditors, the liquidation period is hereby **extended till 31.12.2026 by keeping the excluded period as above, out of it**. Accordingly, **IA (IBC) 935/2026 is allowed**.

-Sd/-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd/-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

Jones

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

I.A. No. 388/2021 & I.A. No.316/2022
in
C.P. (IB) No. 189/BB/2018
(Applications under Section 42 of the Insolvency and Bankruptcy, Code 2016 and Section 5 of the Limitation Act, 1963, Read with Rule 11 and Rule 32 of National Company Law Tribunal Rules, 2016)

IN THE MATTER OF:

BLUEOAK CI PRIVATE LIMITED
No. 10/A, 2nd Floor, Gnanams Villa by
Singapore Constructions Apartment,
Spencer Road, Frazer Town, Bangalore – 560005 Applicant

Versus

MR.. PANKAJ SRIVASTAVA
Erstwhile Liquidator of *Samruddhi Realty Ltd.,*
5th Cross, Navya Nagar, Jakkur, Bangalore –560064 … Respondent

IN THE MAIN MATTER OF:

M/S. MOONBEAM ADVISORY PRIVATE LIMITED
19/2 Poorva Punya, Model House, 4th Street,
Basavanagudi, Bangalore – 560 004. …Petitioner/Operational Creditor

Versus

M/S SAMRUDDHI REALTY LIMITED
No. 1, Tate lane, 2nd Floor, Richmond Road Cross,
Bangalore, Karnataka – 570016 Respondent/Corporate Debtor

Order Delivered on: 23/09/2026

Coram: Shri Sunil Kumar Aggarwal, Hon'ble Member (Judicial)
Shri Radhakrishna Sreepada, Hon'ble Member (Technical)

Parties/Counsels Present:

For the Applicant : Ms. Sukiriti Singh
For the Respondent : Shri Karan Kohli

C O M M O N O R D E R

I.A No. 388 /2021

1. The Interlocutory Application bearing **I.A. No. 388/2021** was filed on 13 12.2021 by **Blueoak CI Private Limited** ("Applicant") against the Liquidator of *Samruddhi Realty Ltd. ("Corporate Debtor / Respondent")* under Section 42 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 and Section 5 of the Limitation Act, 1963 for the following reliefs:

   A. Declare the Applicant herein as Secured Creditor, and accordingly give directions to the Liquidator to consider & permit the applicant to realise its security interest in accordance with Section 52 (1) (b) of the Insolvency and Bankruptcy Code 2016;

   *B. Condone the delay of **165 days** in filing the present Application; and*

   C. *Pass such other or further orders as this Hon'ble Tribunal deem fit under the facts and circumstances of the case, in the interest of justice and equity.I*

I.A. No. 316/2022

2. This Interlocutory Application bearing I.A. No. 316/2022 was filed on 04.08.2022 by Blueoak CI Private Limited ("Applicant") against the Corporate Debtor Respondent under Rule 11 and 32 of the NCLT Rules, 2016 for the following reliefs:

   a) *Direct the Liquidator not to alienate/dispose/create any kind of charge on the properties mentioned in the schedule hereunder till the disposal of the Application bearing l.A. No. 388/2021 in C. P. No. 189/2018.*

SCHEDULE PROPERTIES

Apartment No.	BHK	Block	Floor	Measurment
003	2 BHK	'A' Block	Ground	1190 sq. ft.
103	2 BHK	'A' Block	1st Floor	1190 sq. ft.
104	2 BHK	'A' Block	1st Floor	1190 sq. ft.
107	3 BHK	'A' Block	1st Floor	1570 sq. ft.
109	3 BHK	'A' Block	1st Floor	1570 sq. ft.
002		'D' Block	Ground	1190 sq. ft.
004		'D' Block	Ground	1190 sq. ft.
Constructed in the project Samruddhi Rhythm on Property bearing No.29/2 and 30.1 situated in Doddagubbi Village, Bidarahalli Hobli, Bengaluru, and bounded on the: East by: Alpha Engineering college; West by: property of Sri. Chandrakanth & his brothers: North by: Doddagubbi Min Road & Ground of Alpha Engineering College; South by: Private Property				

b) Pass any such other or further Orders as this Hon'ble Tribunal deems fit under the facts and circumstances of the case, in the interest of justice and equity.

3. The present Applications I**.A. No. 388/2021** and **I.A. No. 316/2022** preferred in main C.P (IB) No. 189/2018 are complementary to each other hence have been taken up, heard and decided together by this common order.

4. The facts of the case are mentioned below:

i. The Applicant is a company engaged in the business of civil engineering and construction. According to the Applicant, it had supplied goods to the Corporate Debtor for construction activities undertaken in one of its projects and a sum of **₹2,44,13,992/-** was payable by the Corporate Debtor but due to non-payment, the Applicant initiated arbitration proceedings for recovery of the amount.

ii. During the pendency of the arbitration proceedings, the parties had arrived at a settlement whereby the Corporate Debtor had agreed to pay **₹94,00,000/-** in full and final settlement of the dispute. The compromise arrangement further provided that, in the event of default, the outstanding amount would carry interest at the rate of 18% per annum from the date of default. The Corporate Debtor paid **₹50,00,000/-**, but defaulted in payment of the remaining **₹44,00,000/-**

iii. On account of the default under the settlement and arbitral award, the Applicant had instituted ***Execution Petition No. 25131/2018*** before the City Civil Court during pendency whereof the Corporate Debtor further paid a sum of ₹5,00,000/-, leaving, the balance of ₹39,00,000/-.

iv. The Executing Court passed an order dated **07.08.2018** attaching seven flats being flats No. 003, 103, 104, 107 and 109 in A Block and flats No. 002 and 004 in D Block in the Corporate Debtor's project known as ***Samruddhi Rhythm***, situated at Doddagubbi, Bengaluru.

v. The Executing Court had permitted auction of Flats Nos. 002, 003 and 004 by order dated 09.04.2019. The attachment of flats constituted the foundation of its subsequent claim that it possessed a security interest over the same.

vi. When the Applicant was proceeding with execution and proposed auction of the attached properties, M/s. Moonbeam Advisory Private Limited initiated

proceedings under Section 9 of the IBC against the Corporate Debtor and vide order dated **16.04.2019**, the Corporate Debtor was admitted into CIRP and moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("Code") came into effect. Due to moratorium, the Applicant could not proceed with the proposed auction of the attached flats but had submitted its claim in **Form B on 24.05.2019** before the Resolution Professional, which was partially admitted.

vii. The Corporate Debtor was directed to be liquidated vide order dated **13.03.2020** and Mr. Pankaj Srivastava was appointed as the Liquidator. The Applicant initially was not aware of such order due to the circumstances prevailing during COVID-19 period. Subsequently, it had filed its claim in **Form C dated 26.12.2020** asserting that it was a secured creditor and expressed its intention to realise the security interest under Section 52(1)(b) of the IBC by standing outside the liquidation process. The Respondent/Liquidator had initially rejected the claim on the ground of delay due to which the Applicant had approached this Authority seeking condonation of delay and that was allowed by order dated **25.01.2021** in IA No.16/2021

viii. On **17.05.2021**, the Respondent/Liquidator requested the Applicant to provide documents establishing the security interest in terms of Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 including the records available with Information Utility, registration of charge with the Registrar of Companies and/or proof of registration with CERSAI and the arbitral award for determination of the claim. The Applicant vide email dated **27.05.2021**, furnished the arbitral award and sought further time for submission of records available with Information Utility, stating that it was facing difficulties relating to the NeSL portal and that the helpdesk was affected during the lockdown period.

ix. Thereafter, vide email dated **29.05.2021**, Respondent/Liquidator admitted the claim of **₹53,26,381/- as an unsecured claim** and rejected the Applicant's request to be treated as a secured creditor and permit the sale of the attached properties, on the ground that it has not furnished documents establishing its

security interest in accordance with Regulation 21 which states that the existence of a security interest may be proved by a secured creditor on the basis of **(a)** the records available in an information utility, if any; **(b)** certificate of registration of charge issued by the Registrar of Companies; or **(c)** proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India.

x. On **03.06.2021**, the Applicant had again communicated to the Liquidator that applicant falls under the category of Secured creditor by virtue of the fact that there is an attachment order of Hon'ble Court in Ex P. No. 25131/2018 in favour of Applicant. The Applicant also further drew references to the definition of 'secured creditor' and 'security interest' under Section 3(30) & 3(31) of Insolvency and Bankruptcy Code, 2016 and Section 100 of Transfer of Property Act, 1882, which clearly brings out and establishes that the attachment constitutes charge against the immovable property and charge may also be through the operation of law i.e. attachment order and by virtue of the said attachment, the Applicant herein becomes the secured creditor. The Applicant had also furnished the Form - C issued by NeSL along with email dated 03.06.2021 in compliance with Regulation 21 of IBBI (Liquidation Process) Regulations, 2016 and requested to reconsider the claim but vide email dated **14.06.2021**, the Liquidator declined to reconsider the decision and advised the Applicant to challenge the decision under Section 42 of the IBC. Treating the communication dated 14.06.2021 as the operative rejection, the Applicant has filed this Application against the decision of Respondent.

xi. The applicant has also sought condonation of the delay of 165 days due to the medical condition of its authorised representative, ***Mr. Girish Prabhu***, who was diagnosed with *Hodgkin's Lymphoma Stage IVBE* and required regular chemotherapy. Therefore, condonation of the delay under Section 5 of the Limitation Act, 1963 is sought asserting that sufficient cause has been established.

xii. During the pendency of the IA No. 388/2021, the Applicant found that the liquidator is endeavouring to alienate the properties that were attached by the

Civil Court in aforesaid Execution proceedings. **I.A. No. 316/2022** therefore, has been filed for directing the Liquidator not to alienate/dispose/create any kind of charge on the such properties till the disposal of l. A. No. 388/2021.

5. The Respondent/Liquidator has opposed the Applications by filing objections on 15.03.2022 on the following principal grounds:

i. **Application under Section 42 is barred by limitation:** Section 42 of the IBC expressly provides a period of 14 days for a creditor to challenge the decision of the Liquidator accepting or rejecting a claim. The decision rejecting the Applicant's claim for secured creditor status was communicated on 29.05.2021, whereas the present Application has been filed on 11.12.2021, which is beyond the statutory period and no sufficient cause had been shown for condoning the delay. The Applicant cannot claim ignorance of the legal process, particularly when it had earlier approached this Authority seeking condonation of delay in filing its claim, which was allowed on 25.01.2021.

ii. **Liquidator is required to determine claims as they stood on the relevant insolvency/liquidation date:** Under the Liquidation Process Regulations, the Liquidator is required to verify and determine claims based on the position existing on the relevant insolvency/liquidation stage and he is empowered to call for additional documents and evidence necessary for verification of a claim. On this basis, the Applicant cannot subsequently acquire or establish a status as a secured creditor in a manner inconsistent with its position when the claim was required to be verified.

iii. **Applicant is not a secured creditor and failed to establish security interest under Regulation 21**: Section 52(3) of the IBC requires the Liquidator to verify a security interest before permitting a creditor to realise such security outside the liquidation estate and Regulation 21 of the Liquidation Process Regulations specifies the modes by which the existence of a security interest may be proved, including, **(a)** records available with an Information Utility; **(b)** Certificate of registration of charge issued by the Registrar of Companies; or **(c)** proof of registration of charge with the Central Registry of Securitisation Asset

Reconstruction and Security Interest of India. When the Applicant had filed its claim asserting secured creditor status, it did not furnish any of the documents required to establish the alleged security interest. After calling upon the Applicant to produce the requisite proof, therefore, the Liquidator was justified in rejecting its claim for secured creditor status and treating the admitted claim as unsecured.

iv. **Non-registration of charge under Section 77 of the Companies Act:** Section 77(3) of the Companies Act, 2013 being a non-obstante provision, provides that a charge created by a company shall not be taken into account by the Liquidator unless the charge is duly registered and a certificate of registration has been issued by the Registrar. As the Applicant has not produced any certificate evidencing registration of charge with the Registrar of Companies, the alleged charge or security interest cannot be recognised for treating the Applicant as a secured creditor.

v. **Attachment did not establish a security interest enforceable under Section 52:** Once the liquidation process commenced, the assets of Corporate Debtor formed part of the liquidation estate and that no security interest could thereafter be created in favour of a creditor during CIRP or liquidation. Reference to the decision of Hon'ble NCLAT **in *Volkswagen Finance Pvt. Ltd. v. Shree Balaji Printopack Pvt. Ltd. & Ors., Company Appeal (AT)(Ins) 02/2020*** has been placed to contend that where the alleged security interest is not established through the recognised statutory mechanisms, the creditor cannot be treated as a secured creditor. Moreover, in the absence of registration or recognised proof of the alleged charge/security interest, the requirements of Section 52 and Regulation 21 are not satisfied.

vi. **Applicant's interpretation of Regulation 21 is contrary to the statutory scheme:** The Applicant's contention that the expression 'may be proved' in Regulation 21 permitted proof of security interest through any means whatsoever as the statutory scheme clearly defines security interest and also prescribes the manner in which such security interest is required to be

established before the Liquidator. The Applicant therefore, is seeking an interpretation beyond the ordinary and statutory meaning of the relevant provisions in the absence of a duly established and recognised security interest. Therefore, the Respondent has urged for dismissal of both the applications and pass any other orders as this Authority may deem fit in the interest of justice.

6. The Applicant has filed Rejoinder on 24.01.2023 disputing the Respondent's objections by stating as follows:

i. **Delay deserves to be condoned:** Mr. Girish Prabhu, the authorised representative of Applicant handling the matter, was suffering *from Hodgkin's Lymphoma Stage IVB* and undergoing regular chemotherapy due to his medical condition and vulnerability during COVID-19 pandemic significantly affected his ability to provide instructions for filing the Application. Further by the orders of Hon'ble Supreme Court the relevant COVID-19 period needs to be excluded for computation of limitation and otherwise sufficient cause existed under Section 5 of the Limitation Act for condonation of delay.

ii. **The claim was subsisting on the insolvency commencement date:** The Applicant's underlying claim was subsisting at the relevant time as sequenced from arbitration, settlement for ₹94,00,000/-, payment of ₹50,00,000/-, subsequent execution proceedings, another payment of ₹5,00,000/- and the outstanding balance of ₹39,00,000. The attachment order in respect of the properties of Corporate debtor had already been passed by the Executing Court before commencement of CIRP. When the process of realization of said attached properties was on, the Corporate Debtor was admitted to CIRP and the moratorium prevented the auction proceedings.

iii. **Dispute regarding nature and classification of claim:** The Applicant has refuted that it is seeking any variation in or enhancement of the amount of its claim as the dispute concerned the **nature and classification of claim**, whether the Applicant is to be recognised as a secured creditor or an unsecured creditor.

iv. **Civil Court attachment created a charge and security interest:** The attachment order passed by the Civil Court in the execution proceedings created a charge over the attached properties. Section 100 of the Transfer of Property

Act, 1882 recognises that immovable property may, by operation of law, become security for payment of money and that such an arrangement may constitute a charge. On this basis, the attachment of seven flats by the Executing Court created a charge by operation of law and consequently created a security interest in its favour entitling the Applicant to be recognised as secured creditor.

v. **Information Utility records and Form C were sufficient:** The Applicant had attempted to establish its security interest through the Information Utility mechanism. Form C and related material obtained through NeSL has been furnished to the Liquidator on the basis of attachment order passed by the Civil Court but the Liquidator failed to properly consider said material. The final certificate depended upon confirmation through the relevant Information Utility process. As such the rejection of claim without considering the material already furnished is unjustified.

vi. **Section 77 of the Companies Act does not apply to a charge created by operation of law:** The Applicant sought to distinguish the charge in the present case from a conventional charge created by a company by contending that Section 77 applies to registration of charges created by a company but the charge in the present case arose not from an instrument voluntarily executed by the Corporate Debtor but from an attachment order passed by a Civil Court in execution proceedings. Therefore, Section 77(3) of the Companies Act, 2013 cannot be applied in a manner suggested by the Liquidator to defeat a charge arising by operation of law.

vii. **CERSAI registration was not applicable to the court-created charge:** The Applicant also disputed the requirement relating to registration with the CERSAI by averring that the CERSAI and SARFAESI framework primarily concerns registration of transactions involving securitisation and creation of security interests under the relevant statutory framework. A Civil Court attachment arising in execution proceedings does not fall within such category as a voluntarily created security interest requiring registration under the framework relied upon by the Liquidator.

viii. **Regulation 21 is permissive and not exhaustive:** The Applicant has placed substantial reliance upon the expression **"may be proved"** appearing in Regulation 21 to contend that the use of the word 'may' indicates that the modes referred to in Regulation 21 are permissive and not an exhaustive code for proving the existence of a security interest. Regulation 21 does not exclude all other legally recognised modes of proving a security interest.

ix. It has been submitted that the Civil Court attachment order, read with the Information Utility material and the relevant statutory provisions, constitute sufficient material for establishing that Applicant is a secured creditor of the Corporate Debtor.

7. The Applicant has filed written submissions on 05.03.2026 stating as follows:

i. **The Applicant's Right had crystallised prior to CIRP:** The Applicant is not a mere operational creditor in abstraction but a decree-holder who has already invoked and succeeded in execution proceedings and holds a court-ordered attachment over identified immovable properties and also the beneficiary of an auction order passed by the competent Civil Court. The Corporate Debtor had settled its liability towards the Applicant at ₹94 lakh, against which ₹55 lakh was paid, leaving ₹39 lakh with interest. Prior to commencement of CIRP, the Civil Court, in execution proceedings, attached seven flats on 07.08.2018 and subsequently passed an auction order dated 09.04.2019 in respect of three flats. CIRP was admitted on 16.04.2019, followed by liquidation on 13.03.2020. Thus, the attachment and auction orders admittedly preceded commencement of CIRP. Further, as per order of attachment dated 07.08.2018, the Corporate Debtor's right to deal with the attached properties stood legally restricted and a judicial encumbrance was created over specific flats and the subsequent auction order dated 09.04.2019 further strengthened the Applicant's execution rights and clearly demonstrated that its interest was attached to identified immovable assets. Thus, as on the insolvency commencement date, the Applicant possessed a legally enforceable, asset-specific interest. Such crystallised right cannot be retrospectively downgraded during liquidation proceedings.

ii. **Judicial Attachment Constitutes Security Interest:** The Applicant relying upon Sections **3(30), 3(31) and 3(4) of the IBC**, contends that the expression "security interest" is deliberately broad and includes any right, title, interest, charge, lien or encumbrance securing payment or performance of an obligation. It is stated that a **court-ordered attachment constitutes an encumbrance** and operates as a restriction on alienation, thereby creating a charge by operation of law. Since the attachment was followed by an auction order concerning identified flats, the Applicant submits that the interest falls within the inclusive statutory definition of "security interest."

iii. **Regulation 21 is Illustrative, Not Exhaustive:** The principal submission is that Regulation 21 states that security interest **may be proved** through records of an Information Utility, ROC registration or CERSAI registration. According to the Applicant, the use of **may** makes these modes enabling and illustrative rather than exhaustive. If the intention were to restrict proof exclusively to these modes, the Regulation would have used mandatory language such as "shall only be proved." The delegated legislation cannot narrow the substantive right created by Section 3(31) of the IBC. The Applicant further relies on the **Form-C/financial information record dated 01.06.2021** submitted before the Tribunal.

iv. **Procedural Compliance Cannot Defeat Substantive Rights:** The procedural requirements should not be applied mechanically so as to defeat a substantive right, particularly where the attachment and auction had occurred before CIRP. The Liquidator has failed to properly consider the nature of the judicial encumbrance and the expansive statutory definitions under the IBC.

v. **Insolvency Cannot Extinguish Vested Rights:** The insolvency law is intended to facilitate equitable distribution and does not contemplate destruction of **vested property interests validly created before insolvency commencement** and treating the Applicant as unsecured creditor which would nullify the pre-CIRP judicial orders and disturb its established execution right.

vi. The Applicant therefore seeks **setting aside of the Liquidator's rejection**, declaration of Blueoak as a **Secured Creditor under Sections 3(30), 3(31) and**

52 of the IBC, and such further orders as may be necessary in the interests of justice.

8. We have heard the Learned Counsels for the parties and carefully perused the material on record as well as applicable legal principles.

9. The issues that arise for consideration in the present Applications are: **(i)** whether the delay of 165 days in preferring the Application under Section 42 of the Code can be condoned; and **(ii)** whether the Applicant can be recognised as a "secured creditor" on the basis of the attachment orders passed in the execution proceedings and the consequential auction order in respect of the properties of the Corporate Debtor.

10. At the outset, Section 42 of the Code provides a period of fourteen days for preferring an appeal against the decision of the Liquidator accepting or rejecting a claim. The Applicant seeks condonation of delay of 165 days by invoking Section 5 of the Limitation Act, 1963, relying upon, inter alia, the medical condition of its authorised representative and the circumstances prevailing during the COVID-19 pandemic.

11. In this regard it would not be out of place to refer to the judgement of the Hon'ble NCLAT, Chennai in the case of ***Sansar Investment and Finance Company Pvt. Ltd. v. Atlantic Spinning and Weaving Mills Ltd., (2026) ibclaw.in 331 NCLAT,*** where it has been held that

"15. The provisions of Section 5 of the Limitation Act, which has been attempted to be attracted by the Ld. Counsel for the Appellant for the purposes of seeking condonation of 1616 days of delay, if we look into the provisions of Section 5 of the Limitation Act in itself, the same will not be attracted, particularly when the provisions of Section 42 of the I & B Code in itself does not contain or provides for a scope of extension of time period other than as prescribed therein for the purposes of preference of an appeal that, means the provisions of Section 42 of the I & B Code from the aspect of the limitation is a self-contained provision under a special statute and once it doesn't prescribe for any scope of extension of time period by borrowing or reference to other provision for condonation of delay i.e., under Section 5 of the Limitation Act or the provisions contained under Section 238A of the of the I & B Code, will not be attracted to override a specific bar of extension of time period in the absence of the same being prescribed under the provisions contained under Section 42 of the I & B Code. Thus, the argument extended by Ld. Counsel for the Appellant that he would be covered by Section 238A of the I & B Code, will not be attracted, owing to the aforesaid reasons, as we have already discussed in the preceding paragraph.

16. Besides that, even if we look into the factual backdrop of the instant case, the number of days of delay that has chanced in preferring the appeal under Section 42 of the I & B Code is too long period to be considered for condonation of delay because that deceives the very object of the preference of an appeal under Section 42 of the I & B Code, as there happens to be a delay of total 1616 days of delay and after exclusion of 895 days of delay, there would still be a delay of 716 days, which is much beyond the statutory object or frame work of law.

17. Under either of the circumstances, the number of days of delay that has been sought to be condoned would be much beyond the ambit of the condonation of delay as prescribed under Section 42 of the I & B Code and the same has been rightly refused to be extended by the Ld. Tribunal while rejecting the appeal preferred under Section 42 of the I & B Code".

12. In the present case, the Liquidator had rejected the Applicant's request to be treated as a secured creditor vide communication dated 29.05.2021 and vide communication dated 14.06.2021, declined to reconsider the decision and advised the Applicant to avail the remedy under Section 42 of the Code. The present Application has actually been filed with a **delay of 182 days** and though the Applicant has placed reliance upon the medical condition of its authorised representative and the circumstances arising during the COVID-19 pandemic, the question is not whether sufficient cause has been shown but in view of the proposition enunciated in ***Sansar Investment,*** whether delay can at all be condoned.

13. The Applicant has counted delay from the date when its request for re-consideration was repelled by the Liquidator. It is not seeking to re-open the re-consideration aspect of its claim but has substantively come up against communication dated 29.05.2021. Just because a communication was subsequently sent to the Liquidator, which elicited a reply, neither the limitation for filing appeal gets extended nor the total period for condonation curtailed.

14. The applicant cannot shirk from its responsibility to explain delay in filing the appeal just by citing the medical condition of its Representative. It is not saying that its entire activities had come to a stand-still due to his such condition. Moreover having already filed an appeal earlier, the Applicant can legitimately be discerned to be aware of applicable timelines yet it did not authorise any other person for this matter for six months reflects its uncaring and callous attitude given that Covid restrictions had been substantially relaxed during the relevant period.

For now, we leave it at that as the Applicant has raised substantive questions relating to its creditor status, we consider it appropriate to examine them as well before reverting to condonation.

15. The Applicant's case is that as the Civil Court in Execution Petition No. 25131/2018, has passed an order dated 07.08.2018 attaching seven flats belonging to the Corporate Debtor and later on vide order dated 09.04.2019, permitted auction of certain identified flats, it amounted to creation of an interest in specific properties of Corporate Debtor in its favour prior to commencement of CIRP and, therefore, it became a secured creditor within the meaning of Sections 3(30) and 3(31) of the Code. The Applicant has further relied upon Section 100 of the Transfer of Property Act, 1882 and contended that the attachment constituted a charge by operation of law.

16. The Applicant has further contended that Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 merely prescribes modes through which the existence of a security interest "may be proved" and that the said modes are illustrative and not exhaustive. The Applicant has also furnished the relevant Information Utility/Form-C material that the Liquidator ought to have considered along with the Civil Court attachment order.

17. The statutory position in this regard has undergone an amendment as per I**nsolvency & Bankruptcy Code (Amendment) Act, 2026** and section 3(31) of the Code is relevant in the present case. The amended Section 3(31) of the code reads as under:

> *(31) "security interest" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person: Provided that security interest shall not include a performance guarantee; Explanation. For the removal of doubts, it is hereby clarified that the security interest shall exist only if it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement, by the act of two or more parties, and shall not include a security interest created merely by operation of any law for the time being in force;"*

18. The Hon'ble Madras High Court in ***Avenue Realty v. Assistant Commissioner, Srirangam (GST Circle) & Ors., (2026) ibclaw.in 2350 HC***, while considering the aforesaid amendment, has treated the amendment as clarificatory and consequently retrospective in operation. The amended provision, therefore, makes a distinction between a security interest arising pursuant to an agreement or arrangement between parties and an interest or charge arising merely by operation of law. The relevant observations are:

> *38. Section 2 of the Amendment Act amends Section 3(31) of the Insolvency and Bankruptcy Code, thereby clarifying the nature of "security interest", which reads as follows: "Explanation. For the removal of doubts, it is hereby clarified that the security interest shall exist only if it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement, by the act of two or more parties, and shall not include a security interest created merely by operation of any law for the time being in force."*
>
> *39. The Statement of Objects and Reasons for the aforesaid amendment is as follows: "Clause 2 of the Bill seeks to amend section 3 of the Insolvency and Bankruptcy Code, 2016 ('Code'). It seeks to insert an explanation in clause (31) of section 3 of the Code to clarify that security interest shall exist only when it creates a right, title or interest or a claim to a property pursuant to an agreement or arrangement by the act of two or more parties and shall not include a security interest created merely by operation of any law for the time being in force. Hence, a provision in central or state legislation or a subordinate law that states that a charge will be made on the property of the corporate debtor for nonpayment of tax or a penalty shall not be considered a security interest. A security interest shall only exist where the parties to an agreement or arrangement agree to create a right, title or interest or a claim to a property, whether or not it is in writing. For instance, a charge created over the property of the corporate debtor to secure the financial debt under an agreement, or an arrangement where a mortgage is created by deposit of title deeds of its property between two or more persons."*
>
> *40.* ***Thus, the amendment explicitly seeks to undo the consequences of the decision in Rainbow Papers. Being a clarificatory amendment, there is no doubt that it will have retrospective application.*** *In this regard, the judgment of the Hon'ble Supreme Court in R. Rajagopal Reddy vs Padmini Chandrasekharan reported in AIR 1996 SC 238, is extracted below:*
>
> > ***"17. As regards, reason No. 3, we are of the considered view that the Act cannot be treated to be declaratory in nature. Declaratory enactment declares and clarifies the real intention of the legislature in connection with an earlier existing transaction or enactment, it does not create new rights or obligations. On the express language of Section 3, the Act cannot be said to be declaratory but in substance it is prohibitory in nature and seeks to destroy the rights of the real owner qua properties held benami and in this connection it has taken away the right of the***

real owner both for filing a suit or for taking such a defence in a suit by benamidar. Such an Act which prohibits benami transactions and destroys rights flowing from such transactions as existing earlier is really not a declaratory enactment. With respect, we disagree with the line of reasoning which commanded to the Division Bench. In this connection, we may refer to the following observations in 'Principles of Statutory Interpretation', 5th Edition 1992, by Shri G.P. Singh, at page 315 under the caption 'Declaratory statutes' : The presumption against retrospective operation is not applicable to declaratory statutes. As states 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. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word 'declared' as well as the word 'enacted'. But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is to explain an earlier Act, it would be without object unless construed 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' 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 pre-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.

19. Further, Hon'ble NCLAT in ***Greater Noida Industrial Development Authority v. Anand Sonbhadra (RP) and Ors., (2026) ibclaw.in 1060 NCLAT*** while considering the amended Section 3(31), has similarly recognised the distinction between a security interest created pursuant to an agreement or arrangement between parties and an interest arising merely by operation of law to hold that the latter cannot, merely by reason of its statutory origin, be treated as a security interest for the purposes of the Code. It also distinguished cases where the security

interest was created by an express contractual provision contained in a registered instrument.

20. Applying the aforesaid statutory position to the facts of the present case, it is not the case of the Applicant that the Corporate Debtor executed any mortgage, charge instrument, hypothecation, agreement or other arrangement whereby the seven flats were provided as security for the payment of the Applicant's dues and the Applicant's claim to secured-creditor status is founded principally upon the attachment order passed by the Civil Court in execution proceedings and the subsequent order permitting auction of certain properties. The fact that the attachment was passed prior to commencement of CIRP and related to identified properties is not, by itself, sufficient to satisfy the statutory requirement under the amended Section 3(31) because even though the attachment undoubtedly operated in the execution proceedings and restricted the dealing with the attached properties yet the attachment did not constitute a "security interest" within the meaning of Section 3(31) of the Code.

21. The Applicant's reliance upon Section 100 of the Transfer of Property Act, 1882, to contend that the attachment constituted a charge by operation of law, does not advance its case in view of the amended Explanation to Section 3(31) because even assuming that an interest or charge arose by operation of law, the amended provision expressly excludes a security interest created merely by operation of law from the definition of "security interest" under the Code. It is further pertinent to note that the distinction between a charge or security interest created by an agreement or arrangement between parties and an interest arising by operation of law assumes significance in the present case. Neither the pleadings nor the material placed before us disclosed any independent transaction or arrangement between the Applicant and Corporate Debtor creating a security interest over the seven flats.

22. The Applicant seeks to derive the entirety of its alleged security from the judicial attachment in the execution proceedings and subsequent auction order but that does not, by itself, alter the character of the original attachment into a security interest created pursuant to an agreement or arrangement between the parties. The execution proceedings establish the Applicant's steps for enforcement of its claim

against identified properties; however, the existence of an execution right cannot, without more, be equated with the existence of a "security interest" satisfying the requirements of Section 3(31) of the Code. A judicial attachment order passed under Order 21 Rule 54 of the CPC is an involuntary, coercive measure issued on judicial intervention. It does not arise from a commercial transaction or agreement executed by the Corporate Debtor.

23. The Applicant has relied upon the expression 'may be proved' under Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016, to contend that the modes specified therein are not exhaustive but assuming the said submission to be correct, compliance with Regulation 21 regarding the manner of proving a security interest cannot dispense with the foundational requirement that the interest claimed must first fall within the statutory definition of "security interest" under Section 3(31) of the Code.

24. We are, therefore, of the considered view that the Applicant has not established that the attachment of the properties in the execution proceedings constituted a "security interest" within the meaning of Section 3(31) of the Code so as to confer upon it the status of a "secured creditor" under Section 3(30) of the Code. Consequently, the Applicant cannot claim the benefit of Section 52 of the Code merely on the basis of the said attachment by civil Court and the consequential auction order. The Court attachment does not confer any ownership, title or proprietary charge on the decree holder nor transform his status from 'unsecured judgment creditor' to 'secured creditor'. Contextual reference to the judgment of Hon'ble Andhra Pradesh & Telangana High Court in **Leo Edibles & Fats Ltd. V Tax Recovery Officer (Central), Hyderabad, (2018) 99 taxmann.com 226** may usefully be made

25. Thus, for the reasons stated above, the Application fails on both counts. Firstly, the delay of 182 days in preferring the Application under Section 42 of the Code cannot be condoned in view lackadaisical reasons offered and law laid down by Hon'ble NCLAT ***in Sansar Investment and Finance Company Pvt. Ltd. v. Atlantic Spinning and Weaving Mills Ltd***. as also on consideration of the substantive claim, the Applicant has failed to establish that the judicial attachment constituted a

"security interest" within the meaning of Section 3(31) of the Code to entitle its classification as secured creditor.

26. For the aforegoing reasons**, I.A. No. 388 of 2021 is dismissed.**

27. Consequently I.A. No. 316 of 2022 seeking to restrain Liquidator from alienating, disposing of or creating any charge over the subject properties (attached 7 flats) pending disposal of I.A. No. 388 of 2021, becomes redundant and is disposed of as infructuous.

-Sd/-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
(Exercising powers of Adjudicating Authority under The Insolvency and Bankruptcy Code, 2016)

IA No. 388/2021 & IA No.316/2022 in **C.P. (IB) No. 189/BB/2018**
(Applications under Section 42 of the Insolvency and Bankruptcy, Code 2016 and Section 5 of the Limitation Act, 1963, Read with Rule 11 and Rule 32 of National Company Law Tribunal Rules, 2016.)

IN THE MATTER OF:

BLUEOAK CI PRIVATE LIMITED
No. 10/A, 2nd Floor, Gnanams Villa by
Singapore Constructions Apartment,
Spencer Road, Frazer Town, Bangalore – 560005 Applicant

Versus

MR.. PANKAJ SRIVASTAVA
Erstwhile Liquidator of *Samruddhi Realty Ltd.,*
5th Cross, Navya Nagar, Jakkur, Bangalore –560064 … Respondent

IN THE MAIN MATTER OF:

M/S. MOONBEAM ADVISORY PRIVATE LIMITED
19/2 Poorva Punya, Model House, 4th Street,
Basavanagudi, Bangalore – 560 004. …Petitioner/Operational Creditor

Versus

M/S SAMRUDDHI REALTY LIMITED
No. 1, Tate lane, 2nd Floor, Richmond Road Cross,
Bangalore, Karnataka – 570016 Respondent/Corporate Debtor

Order Delivered on: 23/09/2026

Coram: Shri Sunil Kumar Aggarwal, Hon'ble Member (Judicial)
Shri Radhakrishna Sreepada, Hon'ble Member (Technical)

Parties/Counsels Present:

For the Applicant : Ms. Sukiriti Singh
For the Respondent: Shri Karan Kohli

Per Radhakrishna Sreepada, Member (Technical):

IA 388 of 2021:

1. As mentioned in Para 9 supra, there are two issues to be considered and decided in the present Application.

(i) whether the delay of 165 days in preferring the Application under Section 42 of the Code can be condoned; and

(ii) whether, on merits, the Applicant can be recognised as a "secured creditor" on the basis of the attachment orders passed in the execution proceedings and the consequential auction order in respect of the properties of the Corporate Debtor.

1. **First Issue**:

whether the delay of 165 days in preferring the Application under Section 42 of the Code can be condoned

I do not agree with the Discussion from Para 9 to Para 14 supra and the decision of my Ld Colleague regarding the aspect of Delay in filing the present Application.

I am of the considered opinion that the issue is covered by the Decision of Hon'ble Supreme Court in the **Order dated 10.01.2022 in Miscellaneous Application no 21 of 2022** in Miscellaneous Application no 665 of 2021 in **Suo-motu Writ Petition © no 3 of 2020 with Miscellaneous Application no 29 of 2022 in Miscellaneous Application no 665 of 2021 in Suomotu Writ Petition © no 3 of 2020**.

3. For convenience, the relevant para is reproduced below.

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

1. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.042021 and 23.092021, **it is directed that the period from 15.03.2020 till 28.022022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasijudicial proceedings**.

(Emphasis supplied)

In view of the above direction of the Hon'ble Supreme Court, I am of the Opinion that the case of the Applicant is covered and it cannot be considered that there is a Delay in filing the Present application.

Hence, there is no need even for getting in to the question of **Whether the Delay can be Condoned under Section 42 of IBC, 2016**. On the Second Issue, I concur with my Ld. Colleague.

-Sd/-

RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)