



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
COURT - IV**

**I.A. No. 2828 of 2025
IN
C.P. (IB) No. 3138/MB/2019**

*[Under Section 60(5), 52(5) of the Insolvency
and Bankruptcy Code, 2016, r/w. Rule 11 of
NCLT Rules, 2016]*

Tata Capital Financial Services Ltd.

...Applicant

v/s.

Sanjay Mahajan

Liquidator of M/s. Jans Copper Pvt. Ltd.

...Respondent

In the matter of:

M/s. JMC Metals Pvt. Ltd.

(CIN: U51101MH2013PTC249817)

...Operational Creditor

v/s.

M/s. Jans Copper Pvt. Ltd.

(CIN: U27310MH2011PTC215149)

...Corporate Debtor

Pronounced: 13.04.2026

CORAM:

**ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)**

**K.R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)**



Appearances : **Hybrid**

For Applicant : Adv. Akshit Vats a/w. Adv. Akshay Sawant a/w. Adv. Hrishikesh Raje i/b. I.V. Merchant & Co.

For Respondent : Adv. Mily Ghoshal.

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. This Application is filed under Section 60(5) read with Section 52(5) of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) and Rule 11 of the National Company Law Tribunal Rules (NCLT Rules), by Tata Capital Financial Services Limited, one of the Financial Creditors in respect of Jans Copper Private Limited, (Corporate Debtor), seeking the following reliefs as against the Respondent, viz., Mr. Sanjay Mahajan, Liquidator of the Corporate Debtor:
 - a. *Allow the present Application;*
 - b. *Declare that the Equipment at Exhibit - 'D' hereto are legally and validly hypothecated in favor of the Applicant by virtue of the Loan cum Hypothecation cum Guarantee Agreement dated 11th December 2018;*
 - c. *Declare that the Equipment at Exhibit - 'D' does not forms the part of the liquidation estate as the Applicant has not relinquished the security interest over the Hypothecated Equipment in any manner whatsoever and in accordance with the same, direct the Respondent to handover the vacant and peaceful possession of the Hypothecated Equipment mentioned at Exhibit - 'D' with normal wear and tear at the cost of the Respondent to be dealt in by the Applicant in accordance with law;*
 - d. *Pending the hearing and final disposal of the present Applicant, direct the Respondent for not proceeding and/or conducting any sale of the Corporate Debtor without primarily deciding on the relinquishment of the security interest of the Applicant in respect of the hypothecated equipments;*



- e. *Grant any ad-interim/interim reliefs with respect to prayer clauses (a) to (d);*
- f. *Pass any such order(s) in the facts and circumstances of the case.*

2. **Brief facts:**

- 2.1 The Applicant is a Non-banking Financial Company (NBFC) registered under the Companies Act, 1956, and duly registered with the Reserve Bank of India under relevant norms. At the request of the Corporate Debtor, the Applicant sanctioned an Equipment Finance Facility to the tune of Rs. 1,50,00,000/- (One Crore Fifty Lakh Rupees) *vide* Sanction Letter dated 23.11.2018 for the period of 60 months at a floating interest rate at the rate of 12% p.a, for the purchase of equipment as more categorically mentioned therein.
- 2.2 In accordance with the said Sanction Letter, the Applicant and the Corporate Debtor, along with Mr. Naresh Jain and Mr. Kamlesh Jain as guarantors for the said Facility, entered into a Loan Cum Hypothecation Cum Guarantee Agreement dated 11.12.2018, in which the schedule of the machinery is described in Annexure 2 therein. Subsequently, the Agreement was modified by an Addendum to the Sanction Letter dated 24.01.2019, and the machinery hypothecated to the Applicant was further revised by a Deed of Modification dated 24.01.2019.
- 2.3 Additionally, the Applicant sanctioned a Term Loan Facility of Rs.25,55,000/- on the terms and conditions contained in the Term Loan Agreement dated 06.08.2020. To secure the Term Loan, the Corporate Debtor executed a Deed of Hypothecation dated 10.02.2021, thereby creating a second charge on the machinery already hypothecated to the Applicant.
- 2.4 The Corporate Debtor was admitted into the Corporate Insolvency Resolution Process (CIRP) by the Adjudicating Authority (AA) *vide* Order dated 24.02.2023. Upon rejection of the Resolution Plan received, the AA,



vide its Order dated 13.08.2024, initiated the Liquidation Process under Section 33(2) of the Code. Consequently, the Corporate Debtor is currently undergoing liquidation.


- 2.5 Pursuant to the commencement of the Liquidation Process, the Respondent (Liquidator) made the requisite public announcement. Accordingly, the Applicant submitted its Claim Form in Form D on 01.10.2024 as per Regulation 18 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (Liquidation Process Regulations), for a total claim of Rs.1,93,41,426.26/- (One Crore Ninety-Three Lakh Forty-One Thousand Four Hundred Twenty-Six Rupees and Twenty-Six Paise) as on 13.08.2024. The Applicant further states and submits that, in the said Form D, the Applicant had categorically disclosed the execution of the Loan-cum-Hypothecation-cum-Guarantee Agreement dated 11.12.2018 and the Deed of Hypothecation as evidence that the equipment was validly and legally hypothecated to the Applicant by the Corporate Debtor.
- 2.6 During the ongoing liquidation process, the Applicant has issued a Loan Recall Notice dated 01.08.2024 for the purpose of recalling the Equipment Finance Facility and Invocation of Guarantee under the said Loan-cum-Hypothecation-cum-Guarantee Agreement for Equipment Finance dated 11.12.2018, read with Deed of Modification dated 24.01.2019.
- 2.7 Applicant was one of the members of the Committee of Creditors (CoC) of the Corporate Debtor, and is presently one of the members of the Stakeholders' Consultation Committee (SCC) in respect of the Corporate Debtor, holding a voting share of 6.19%.
- 2.8 In consonance with Regulation 31(A) of the Liquidation Process Regulations, the meetings of SCC were convened wherein discussions ensued regarding a Scheme of Compromise and Arrangement proposed by the suspended board of directors (Scheme) under Section 230 of the

Companies Act, 2013. The Applicant states that the said Scheme was ultimately rejected by 86% of the SCC's voting share at its fifth meeting dated 04.02.2025.

- 2.9 The Applicant *vide* its email dated 19.02.2025 intimated the Respondent/Liquidator that the Applicant holds the exclusive charge on the assets/security and requested to exclude those assets/securities from the liquidation process of the Corporate Debtor as mentioned in the Form D submitted by the Applicant, and further requested him to hand over the same to the Applicant within 30 days so that the Applicant could sell the hypothecated asset/securities by following the due process of law. The list of the said assets is extracted hereunder:

S.No	Name of Supplier	Description of Machinery	Date of Invoice
1	Bozhongsuan Trading Co. Ltd.	Hydraulic drawing machine / Yb J50-10 Hydraulic Drawing Machine	1st March 2018
2	Honesty Machine Tool	Straightening and cleaning machine	21st March 2018
3	Rupam Conductors Pvt. Ltd	Copper Extrusion machine with spares, Air Compressor, Air Drier, Air Receiver	18th February 2015
4	Pranam Enterprises	RBD - (Continues Wire Drawing Machine)	12th January 2019

- 2.10 The Applicant submits that the SCC held its 6th meeting on 06.03.2025, wherein the Liquidator highlighted that if the machines as mentioned by the Applicant in its email dated 19.02.2025 were excluded from the liquidation estate, then only limited assets would remain for sale. In view of the same, the Liquidator requested Axis Bank (being the major shareholder in the SCC) to seek a legal opinion on the matter, and further



advised the Applicant herein to conduct a review of the relevant IBC provisions to determine the applicable timeline for taking back an asset from the liquidation estate, as per the provision of the Code.

3. **Submissions of Applicant**

- 3.1 The Applicant states that its authorised representative has consistently taken the stance in all the SCC meetings that the Applicant remains outside the purview of the liquidation estate, as it had decided not to relinquish its rights over the hypothecated equipment. However, this position has not been recorded by the Respondent/Liquidator, and, as a result, the Applicant was constrained to send the aforementioned email dated 19.02.2025. The Applicant contends that, despite this formal communication, the Respondent/Liquidator rejected the Applicant's request without providing any justification.
- 3.2 The Applicant therefore submits that this is a fit case for this Tribunal to exercise its inherent power and direct the Respondent/Liquidator to keep the hypothecated equipment detailed at Exhibit - 'D' out of the liquidation estate and handover the hypothecated equipment to the Applicant, in order to enable the Applicant to exercise its rights in accordance with the provisions of Code for realisation of its legitimate dues. Consequently, the Applicant filed this Application.

4. **Submissions of Respondent**

- 4.1 The Respondent/Liquidator, *vide* the Affidavit-in-Reply dated 15.07.2025, has stated that he received the liquidation commencement order dated 13.08.2024 passed by this AA, on 05.09.2024. Thereafter, a public announcement was made on 10.09.2024, and the SCC was accordingly constituted.
- 4.2 The Respondent submits that the 1st meeting of SCC was attended by the erstwhile CoC Members, viz., Axis Bank Ltd. (having 92% share) and the



Applicant, Tata Capital Financial Services Ltd. (having 6.14 share). The Respondent formally constituted the SCC on 22.11.2024 following its second meeting dated 10.10.2024, which presently comprises the following:

Name of Creditor	Category	Voting Percentage
Axis Bank	Secured Financial Creditors	75.80%
Tata Capital Financial Services Ltd.	Secured Financial Creditor	6.14%

JMC Metals Private Limited	Operational Creditors (Other than Workmen and Employees)	12.86%
Oswal Minerals Private Limited	Operational Creditors (Other than Workmen and Employee)	4.77%
Goods and Service Tax Department	Operational Creditor (Government Dues)	0.43%

- 4.3 The Respondent states that a Scheme of Compromise and Arrangement was considered by the SCC during its 3rd and 4th meetings, and was ultimately rejected at its 5th meeting held on 04.02.2025 with 86% vote-share. Subsequently, the Respondent received an email from the Applicant dated 19.02.2025, in which the latter requested the handover of the assets hypothecated to it for realisation under Section 52 of the Code. The Respondent contends that this is contrary to the disclosure of claim by the Applicant in Form D, specifically in column 8 thereof, wherein the Applicant had declared the "Details of any security held, the value of the security, and the date it was given " as "NIL", thereby failing to disclose any security interest in

respect of its claim.

- 4.4 The Respondent has placed reliance on Regulations 21A and 31A(2) of Liquidation Process Regulations to state that the Applicant in the present scenario has failed to express its interest for such relinquishment within the required time frame and thus the Respondent proceeded in a bona fide manner that the said assets shall form part of the liquidation estate. It is thus stated that the Applicant, having failed to assert its rights at the appropriate stage and having actively participated as an SCC member, is estopped from now claiming otherwise or seeking control over any asset of the Corporate Debtor in liquidation.
- 4.5 The Respondent has also relied on the 3rd SCC meeting to state that the Applicant had knowledge of the fact that the Respondent took custody of the assets of the Corporate Debtor on 18.12.2024, and the *panchnama* was drawn in the presence of the representative of the Applicant. Pursuant to the same, the Respondent also conducted a valuation of the Corporate Debtor and shared the valuation report dated 13.01.2025 with the Applicant upon receiving the latter's confidentiality undertaking. The Respondent has therefore stated that in light of the inconsistencies on the Applicant's part due to its continued participation in the liquidation process, SCC meetings and negotiation with the suspended directors, and a delayed communication for possession of secured assets for realisation under Section 52 of the Code, the present Application is liable to be rejected.

5 Analysis and Findings

- 5.1 We have perused the available records and heard both the Ld. Counsel for the Applicant and the Respondent.
- 5.2 The records reflect that the proceedings for liquidation of the Corporate Debtor commenced on 13.08.2024 (liquidation commencement date) in accordance with Section 33 of the Code, and the Respondent was



appointed as the liquidator of the Corporate Debtor. The Respondent made a public announcement on 10.09.2024, inviting creditors to submit their claims, with the last date for submission being 04.10.2024. The Applicant submitted its claim in Form D within the prescribed time on 01.10.2024 for Rs.1,93,41,426.26/-. The first meeting of SCC was convened with all the creditors of the Corporate Debtor in accordance with Regulation 31(IA) of the Liquidation Process Regulations. Thereafter, SCC was formally reconstituted based on the claims received on 22.11.2024, in which the Applicant's voting share is 6.14%. During the 2nd SCC meeting, the suspended directors of the Corporate Debtor submitted a Scheme for Compromise and Arrangement (Scheme) under Section 230 of the Companies Act. It is recorded in the Sixth SCC meeting minutes dated 06.03.2025 that the Scheme was further discussed in the 3rd and 4th SCC meetings, put to a vote in the 5th SCC meeting held on 04.02.2025, and was rejected by 86% of SCC members.

5.3 After rejection of the Scheme, the Applicant *vide* email dated 19.02.2025 informed the Respondent that it holds exclusive charge on the machinery hypothecated to it and requested to exclude those assets from the liquidation estate of the Corporate Debtor. Further, the Applicant requested that the hypothecated machinery be handed over to the Applicant within 30 days so that the Applicant could sell the hypothecated assets as per law. Since the Respondent rejected the request, this Application has been filed.

5.4 While the Applicant has been asserting its security interest, the Respondent raised an issue for not disclosing any security interest and its value in Form D. The Respondent submits that this omission is material, inconsistent with the current stance, and indicative of the Applicant's failure to assert its rights as a secured creditor at the appropriate stage. It is, however, observed from the records that the Applicant has been categorised as a secured financial creditor on the basis of the



hypothecation deeds executed in its favour throughout the liquidation process, without any dispute by any party, and has been so categorised in all the SCC meetings. Thus, the status of the Applicant as a secured financial creditor cannot be a matter of contention at this stage. In view of the above, the only contention which arises for our consideration is whether the Applicant can assert its right to realise its security interest under Section 52 of the Code at this stage.

5.5 Before we proceed to examine the issue at hand, it would be useful to refer to the relevant Regulation in the Liquidation Process Regulations:

“21A. Presumption of security interest.

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

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

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

(a) as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date; and

(b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the



liquidator within one hundred and eighty days from the liquidation commencement date:

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

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

- (3) *Where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.*

xxxx”

- 5.6 Regulation 21A, which came into effect on 25.07.2019, categorically states that a secured creditor has the option to either relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, using Form C or Form D of Schedule II. Further, the proviso delineates the consequences of failing to intimate the decision within 30 days of the liquidation commencement date, under which the assets covered by the security interest shall be presumed to be included in the liquidation estate. It is also relevant to notice that Form C and D devised in Schedule II were amended w.e.f. 25.07.2019, with the insertion of 8A, to clearly state whether the security interest has been relinquished or not.
- 5.7 In the present case, it is observed that in Form D at serial number 8, the Applicant has stated the details of security held, the value of security, and



the date it was given, as” NIL”. However, at serial number 8A, where the Form asks whether the security interest is being relinquished, the Applicant has answered ‘No’. In our view, serial numbers 8 and 8A are complementary and, when read together, give the impression that the Applicant has not indicated any security it proposed to relinquish. Under Section 52 of the Code, the Applicant being the secured creditor had the option to either relinquish its security interest to the liquidation estate and receive proceeds from the sale by the Liquidator of the assets or to realise its security interest. Under Regulation 21A of the Liquidation Process Regulations, the Applicant had to inform the Liquidator of its decision, *inter alia*, to realise its security interest. However, the Applicant has not duly discharged its obligation in Form D.A mere assertion by the Applicant that its authorised representative, who was present at all the SCC meetings, has time and again orally informed the Respondent that the Applicant intends to remain outside the liquidation estate, having decided not to relinquish its right over the hypothecated equipment, cannot be accepted without any further support.

5.8 It is an admitted fact that the Applicant actively participated in SCC meetings and exercised voting rights. As per the first proviso to Regulation 31A(2), a secured creditor who has not relinquished its security interest under Section 52 of the IBC is not eligible to be a member of the SCC. The Applicant's continued participation in SCC meetings, without objection to its inclusion, undermines the contention that the Applicant always sought to stand outside the liquidation process to enforce security under Section 52 of the Code.

5.9 Another relevant factor that needs consideration is that only after rejection of the Scheme, the Applicant sought to enforce the security interest *vide* email dated 19.02.2025, which is after 6 months from the liquidation commencement date. Sub-regulation (3) of Regulation 21A of the Liquidation Process Regulations specifies that even if a secured creditor



has opted to realise its security interest, it is required to pay the amount specified in sub-regulation (2) of Regulation 21A, and in case of failure, the assets, which is subject to security interest, shall become part of the liquidation estate. There is nothing on record to show that the Applicant has complied with the requirements set out in Regulation 21A(2) in the present matter.

- 5.10 Taking the above into account, the Applicant's failure to clearly mention its intention to enforce its security in the Form D, coupled with continued participation in subsequently held SCC meetings without attempting to correct this position; and participation during the taking over of the custody of hypothecated assets by the liquidator, does not entitle it at this juncture to exercise the option, as it goes against the entire liquidation process carried out in respect of the Corporate Debtor. Consequently, there is no merit in the Application, and it deserves to be dismissed.
- 5.11 Accordingly, the I.A. No. 2828 of 2025 is hereby **dismissed**.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Aditya, LRA

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)
