

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

IA(IBC)/1/KOB/2025

IN

IBA/240/KOB/2019

*(Under Section 60(5) of the IBC,
2016 r/w Rule 11 of the NCLT
Rules, 2016)*

Date of Institution: 01.01.2025

Order delivered on: 10.06.2026

In the matter of: -

M/s Raihan Healthcare Private Limited

Memo of Parties: -

**Meenachil East Urban Co-operative Bank
Limited,**

Represented by its General Manager,
No.4266, Poonjar, Poonjar Thekkekara P.O,
Kottayam District-686582

... Applicant

Vs.

CA Mahalingam Suresh Kumar

Liquidator of M/s Raihan Healthcare Private
Limited, M/s SPP & Co, Chartered Accountants,
No. 27/9, Nivedh Vikas, Pankaja Mill Road,
Puiyakulam, Coimbatore-641045.

... Respondent No. 1

Union Bank of India,

Erattupetta Branch, Represented by its Manager
1st Floor, Paraanal Arcade, Aruvithura, SD
Meenachil, Erattupetta, P.O., Kottayam-686121

... Respondent No. 2

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Shankar Market,
Connaught Circus, New Delhi-110001
Represented by its Chairperson
... Respondent No. 3

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL
HON'BLE MEMBER (TECHNICAL) : SHRI. RAVICHANDRAN RAMASAMY

Appearances:

For the Applicant : Mr. Shinu J Pillai, Advocate.
For the Respondent No. 1 : Mr. A.G. Sathyanarayana, Advocate.
For the Respondent No. 2 : Mr. Varun Srinivasan, Advocate.

ORDER

Per Coram

1. The present Application has been filed by Meenachil East Urban Co-operative Bank Limited, one of the secured financial creditors of Raihan Healthcare Private Limited (the Corporate Debtor), against the Liquidator of Raihan Healthcare Private Limited, Union Bank of India, another secured financial creditor of the Corporate Debtor, and the Insolvency and Bankruptcy Board of India, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking the following reliefs:
 - i. *May be pleased to call for the entire records pertaining to the proceeds of liquidation and distribution of proceeds and distribution effected by the 1st Respondent Liquidator;*
 - ii. *May be pleased to adjudicate the amounts payable as liquidation expenses and liquidator's fees and limit the said amounts to a justifiable amount;*

- iii. *May be pleased to direct the 1st Respondent to redistribute the proceeds of liquidation in strict adherence to Section 53 of the Insolvency and Bankruptcy Code;*
- iv. *May be pleased to direct the 3rd Respondent to initiate appropriate enquiry proceedings as against the 1st respondent and initiate disciplinary actions as against the misconduct committed.*

INTERIM RELIEF SOUGHT

For the reasons stated in the Application this Hon'ble Tribunal may be pleased to restrain the 1st Respondent from distributing any further amount as liquidation proceeds without the directions of this Hon'ble Tribunal.

2. The applicant has made the Insolvency and Bankruptcy Board of India as the Respondent No. 3 in the party array. Vide order dated 22.04.2025, this Adjudicating Authority has observed that the Insolvency and Bankruptcy Board of India is not a necessary party in this matter, and service of notice to Respondent No. 3 has been dispensed with.

Brief facts of the case:

3. The Applicant is a secured financial creditor of Raihan Healthcare Private Limited (hereinafter 'the Corporate Debtor') and had sanctioned (i) Cash Credit of Rs. 2,80,00,000/- on 22.05.2015, (ii) Mortgage Loan of Rs. 1,20,00,000/- on 20.07.2015, and (iii) Mortgage Loan of Rs. 1,20,00,000/- on 02.07.2017, secured by equitable mortgage over the Corporate Debtor and promoters/personal guarantors.
4. It is submitted that the Corporate Insolvency Resolution Process against the Corporate Debtor was admitted on 20.03.2019 in IBA/240/2019. The Corporate Debtor was ordered into liquidation on 16.12.2019 in MA/30/2019, and the Respondent No.1 was appointed Liquidator on 17.01.2020 in MA/45/2019. The

Applicant filed Form D claim for Rs. 5,25,42,747.70/- on 19.02.2020, relinquishing security, and the claim was admitted under Section 40(1) of the Insolvency and Bankruptcy Code, 2016.

5. It is submitted that the Liquidator obtained possession of the mortgaged leasehold land pursuant to the orders dated 01.02.2021 and 21.01.2022 passed in MA/76/KOB/2020. The said orders were upheld by the Hon'ble National Company Law Appellate Tribunal vide judgment dated 09.07.2024, and were subsequently affirmed by the Hon'ble Supreme Court. The Liquidator auctioned assets, including the sale of land and building for Rs. 31,21,74,000/- by Sale Certificate dated 22.08.2024, and plant and machinery for Rs. 5,45,13,000/-, and credited Rs. 1,54,10,686/- to the Applicant without complying with Section 53 of the Insolvency and Bankruptcy Code, 2016.
6. The Applicant further submitted that the distribution reflected in Annexure A-3 is contrary to the waterfall mechanism under Sections 52 and 53 of the Code, as the Liquidator adopted a security-value-based distribution resulting in differential treatment among secured creditors. It is further submitted that, despite holding 11.56% stake in the corporate assets, the Applicant received only 0.73% of the realised value of the hospital building. Annexure A3 also wrongly included liquidation expenses and fees without approval, ignores the Applicant's payment of Rs. 17,63,641.62 towards expenses, and double-counts costs by showing Rs. 4,25,00,000/- and Rs. 3,18,19,130/- under Section 53(1)(a) of the Code. Further, contingent PF claims of Rs. 2,75,00,000/- and dues of Rs. 1,85,01,359/- were improperly included.
7. It is stated that by a letter dated 28.08.2024, the Liquidator sought title deeds and assured release of dues, but no payment followed. In the SCC meeting on 13.11.2024, the Applicant raised objections, but the Liquidator proceeded without compliance with Section 53 of the Insolvency and Bankruptcy Code,

2016, and Regulation 42 of the IBBI (Liquidation Process) Regulations, 2016, causing financial prejudice.

Reply of Respondent No.1:-

8. The Respondent No.1/Liquidator submitted that the distribution of proceeds has been carried out strictly in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016, after secured creditors relinquished their security interests under Section 52 of the Code. Distribution was made under Section 53(1)(b)(ii) of the Code based on the liquidation value determined by registered valuers. CIRP costs, liquidation costs, and the distribution method were transparently discussed in SCC meetings. The Applicant participated and was informed that distribution is based on security interest and not voting share, without raising objections. The challenge is belated, and no misconduct is shown.
9. The Respondent No.1 further submitted that the allegation of non-compliance with Section 53 of the Insolvency and Bankruptcy Code, 2016, is without merit. Distribution is based on the value of secured assets, not CoC/SCC voting share or outstanding debt. The process is transparent and in compliance with the Code. The alleged discrepancy between the sale certificate and the liquidator's worksheet is misconceived. The worksheet is based on the liquidation value by registered valuers under the Code, while the sale certificate reflects the Sub-Registrar's Office guideline/fair value. The sale deed issued to Sunrise Academy of Medical Specialities India Pvt. Ltd. is for Rs. 31.21 Crores for land and building.
10. The allegation of excessive liquidation expenses is baseless. Accounts are audited annually, filed before this Adjudicating Authority, and are currently under re-audit as per SCC decision. A reserve was kept for ongoing expenses and EPFO dues, which have priority. Since some assets are still unsold, final accounts

and distribution are subject to adjustment. CoC/SCC approval is not required for distribution under the Code. Distribution has been made under Section 53 of the Code within the prescribed framework. Regulation 42 of the IBBI (Liquidation Process) Regulations, 2016 is fully complied with, as all records, accounts, receipts, and payments are properly maintained and shared.

11. The liquidator further stated that the allegation of apportionment is misconceived. Distribution is based on the liquidation value of distinct security interests as per registered valuers, not on pro-rata debt or voting share. Pro-rata applies only where security is common, which is not the case here.

Reply of Respondent No.2:-

12. It is submitted that Respondent No.2 Bank had extended credit facilities to the Corporate Debtor, including Term Loans of Rs. 19.50 Crores, Rs. 3.80 Crores, Rs. 1.28 Crores, and Rs. 10 Crores, Overdraft Facility of Rs. 1.50 Crores, Cash Credit Loan of Rs. 1 Crore, and Demand Loan of Rs. 23,26,671/-. The Corporate Debtor was ordered into liquidation on 16.12.2019, and Respondent No.1 was appointed as Liquidator. Respondent No.2 filed its claim in Form D for Rs. 37,84,79,564.86/-. Pursuant to the auction notice dated 12.06.2024, the assets were sold on 12.07.2024. The land and building were sold for Rs. 31,21,74,000/- and plant and machinery for Rs. 5,45,13,000/-, totalling Rs. 36,66,87,000/-. Respondent No.2 received Rs. 23.94 Crores in proportion to its secured interest, and the Applicant also received its due share. Distribution was carried out strictly under Section 53 of the Insolvency and Bankruptcy Code, 2016.

13. According to R2, the Applicant has raised vague and unsupported allegations without proving any error in distribution. The Applicant itself admits that distribution is based on security value, yet wrongly claims the amount received is meagre. Respondent No.2 holds the first charge, and distribution was made

based on security interest and not debt or voting share. Section 48 of the Transfer of Property Act, 1882, also recognises priority based on charge. In *ICICI Bank vs. SIDCO Leathers Ltd.* [Civil Appeal No. 2332 of 2006], the Hon'ble Supreme Court held that pari passu treatment does not affect inter se priority among secured creditors and, in the absence of specific provisions, the Transfer of Property Act, 1882, governs such priority. The same principle applies to Section 53 of the Insolvency and Bankruptcy Code, 2016, and is supported by the Insolvency Law Committee Reports, 2018 and 2020.

14. Further, in *Technology Development Board vs. Anil Goel, Liquidator of Gujarat Oleo Chem Ltd.*, the NCLT Ahmedabad held that distribution must be based on security value. Though the Hon'ble NCLAT took a different view, the Hon'ble Supreme Court in *SASF vs. Technology Development Board* (C.A. No. 2206/2021) stayed the NCLAT order, thereby reviving the NCLT view. The allegation that liquidator fees exceed receipts is also baseless, as distribution was made proportionate to security value. The Applicant has repeatedly alleged fraud without any evidence. As per Respondent No.2's Form D, assets worth Rs. 37,84,79,564.86/- were secured by mortgage, entitling Respondent No.2 to proceeds proportionate to the value of its security. The Application is belated, misconceived, and liable to be dismissed.

15. It is submitted that the allegation against the liquidator is baseless as distribution has been made strictly in accordance with the Insolvency and Bankruptcy Code, 2016. Under Section 36 of the Code, Provident Fund dues have priority, as upheld by the Hon'ble Supreme Court, and the Liquidator's provision for PF dues is valid and cannot be disputed. The allegation of non-compliance with Regulation 42 of the IBBI (Liquidation Process) Regulations, 2016, is also unsupported by any evidence and is therefore untenable.

Findings:

16. This Adjudicating Authority has heard the learned counsel appearing for the Applicant, Respondent No.1/Liquidator and Respondent No.2 Bank, and has carefully considered the pleadings, documents and materials placed on record. The present Application has been filed by the Applicant, a secured Financial Creditor of the Corporate Debtor, which had relinquished its security interest in favour of the liquidation estate under Section 52 of the Insolvency and Bankruptcy Code, 2016, seeking, inter alia, re-adjudication of liquidation expenses and liquidator's fees, redistribution of liquidation proceeds realised during the liquidation process, and initiation of disciplinary proceedings against the Liquidator. The Application essentially challenges the manner in which the liquidation proceeds have been distributed by the Liquidator under Section 53 of the Insolvency and Bankruptcy Code, 2016, and the valuation methodology adopted for such distribution.
17. The principal grievance of the Applicant arises from the distribution of the liquidation proceeds effected by Respondent No.1. The Applicant's claim for an amount of Rs. 5,25,42,748/- was admitted by the Liquidator and, based on the admitted claim amount, the Applicant held 11.56% voting share in the Stakeholders' Consultation Committee (SCC). It is the Applicant's contention that, notwithstanding its status as a secured Financial Creditor and its admitted claim, the distribution ultimately made by the Liquidator did not reflect its proportionate entitlement. The Applicant has pointed out that the land and building of the hospital were sold by the Liquidator for a total consideration of Rs. 31,21,74,000/-, out of which the value attributed to the land was Rs. 20,50,00,000/- and the value attributed to the building was Rs. 10,71,74,000/-. Against the said realisation, the Applicant received an amount of Rs.

1,54,10,686/-, which, according to the Applicant, is disproportionately low having regard to its admitted claim and its stake in the liquidation estate.

18. The challenge raised by the Applicant is founded primarily on its interpretation of Section 53 of the Insolvency and Bankruptcy Code, 2016. According to the Applicant, the Liquidator has failed to distribute the sale proceeds in the manner contemplated under the statutory waterfall mechanism and has further acted contrary to the directions issued by this Adjudicating Authority in MA/76/KOB/2020. The Applicant alleged that the Liquidator committed a fundamental error in adopting the value of the respective security interests as the basis for distribution amongst the secured creditors who had relinquished their security interests under Section 52 of the Code. It is the specific case of the Applicant that, once the secured creditors relinquished their securities and became entitled to participate in the distribution under Section 53(1)(b) of the Code, the realised value ought to have been distributed amongst such creditors on a pro rata basis having regard to their admitted claims, rather than on the basis of the value of the underlying security interests. The determination of this issue, therefore, lies at the core of the present dispute.

19. On the other hand, Respondent No.1, the Liquidator, and another secured creditor, Respondent No.2, have defended the distribution carried out during the liquidation process and have stated that the same is fully in conformity with the scheme of Sections 52 and 53 of the Insolvency and Bankruptcy Code, 2016. According to them, all the secured creditors, including the Applicant, had relinquished their respective security interests in favour of the liquidation estate and, consequently, the proceeds realised from the sale of the assets were distributed having due regard to the value of the respective security interests held by each secured creditor. It is their specific case that the methodology adopted by the Liquidator is consistent with the statutory framework governing

liquidation and does not suffer from any legal infirmity. In support of their submission, Respondent No.1 and Respondent No.2 have relied upon two tables reflecting the summary of the amount realised from the sale of the hospital assets and the summary of the distribution thereof, which are reproduced below:

Table E- Summary of the amount realized from sale of the hospital assets are stated hereunder:

S.No.	Particulars	Land & Building	Plant &	TOTAL (Amt in Rs)
		Amount	Amount	
1	Value of Land & Builidng	31,21,74,000		31,21,74,000
2	Value of Machinery & other movables		5,45,13,000	5,45,13,000
	Total Sale Value			36,66,87,000

TABLE-F : Summary of the Distribution working is stated hereunder:-

		Land		Building		Plant & Machinery	Total
		UBI	MECUB	UBI	MECUB	UBI	
	Security Value as per valuation report	16,08,75,000	2,64,14,736	26,18,94,720	19,36,000		
	Percentage of share	85.90%	14.10%	99.27%	0.73%	100.00%	
	Actual Sale value in e-auction	13,65,34,636		17,56,39,364		5,45,13,000	36,66,87,000
	Actual Sale value realisation apportioned based on the security holder interest	11,72,78,235	1,92,56,401	17,43,50,515	12,88,848	5,45,13,000	36,66,87,000
Less	CIRP	92,89,482	15,25,279	1,38,10,116	1,02,088	43,19,853	2,90,46,818
Less	Liquidation Expenses	1,24,07,724	20,37,276	1,84,45,819	1,36,357	57,55,458	3,87,82,634
Less	PF Provision and payment	1,34,29,933	22,05,117	1,99,65,476	1,47,590	62,35,272	4,19,83,389
	Net Realised	8,21,51,095	1,34,88,730	12,21,29,104	9,02,813	3,82,02,417	25,68,74,159
Less	Liquidator Fee	15,80,098	2,59,443	23,49,037	17,365	7,34,787	49,40,731
	Amount Available for Distribution	8,05,70,997	1,32,29,287	11,97,80,067	8,85,448	3,74,67,630	25,19,33,429
	Amount Proposed to Distribution	7,99,52,665	1,31,27,761	11,88,60,831	8,78,653	3,71,80,090	25,00,00,000
	Distribution to worker	9,42,788	1,54,800	14,01,587	10,361	4,38,421	29,47,958
	Distribution to banker	7,90,09,877	1,29,72,961	11,74,59,244	8,68,292	3,67,41,668	24,70,52,042

20. While Table E reflects the amount realised from the sale of the assets of the Corporate Debtor during the liquidation process, Table F sets out the distribution working prepared by the Liquidator and the manner in which the said sale proceeds were apportioned amongst the secured creditors. The table records the security value attributable to each secured creditor, the percentage share worked out on the basis of such security interest, the allocation of the actual sale proceeds accordingly, and the deductions made towards CIRP costs, liquidation expenses, provident fund liabilities and Liquidator's fee. The net amounts available for distribution and the amounts ultimately distributed are also reflected therein. The Respondents have relied upon the said distribution working to contend that the distribution was carried out in a proportionate manner, having regard to the respective security interests relinquished by the secured creditors and in accordance with the scheme contemplated under Sections 52 and 53 of the Code.

21. We have carefully considered the submissions advanced by the Applicant, Respondent No.1 and Respondent No.2, and have also perused the material available on record. Since the principal controversy in the present Application pertains to the manner in which the liquidation proceeds are to be distributed amongst secured creditors who have relinquished their security interests under Section 52 of the Insolvency and Bankruptcy Code, 2016, it would be apposite to first examine the statutory framework governing such distribution. Accordingly, reference may be made to Section 53 of the Insolvency and Bankruptcy Code, 2016, as amended by the Act, 2026, which reads as under:

Section 53: Distribution of assets.

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

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

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

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

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

[Explanation.--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;]

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following:—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

[Explanation.--For the removal of doubts, it is hereby clarified that any amount, whether or not a security interest is created to secure such amount by an act of two or more parties or merely by operation of law, due to the Central Government and the State Government, in respect of the whole or any part of the period of two years preceding the liquidation commencement date, shall be distributed under this sub-clause and any remaining amount, whether or not such security interest is created to secure the amount, due to the Central Government and the State Government, shall be distributed under clause (f);]

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

[Illustration I.

The workmen and the secured creditors of the corporate debtor have a contractual arrangement which provides that in the event of insolvency or liquidation of the corporate debtor, all debt owed to the secured creditors shall be cleared before clearing any debt owed to the workmen. Such a contractual arrangement shall be disregarded.

Illustration II.

"X", a secured creditor of the corporate debtor, has a contractual arrangement with "Y", another secured creditor of the corporate debtor. As per the contractual arrangement, in the event of insolvency or liquidation of the corporate debtor, the debt owed to "X" shall be cleared before clearing any debt owed to "Y". Such a contractual arrangement shall not be disregarded.]

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation.- For the purpose of this section—

(i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will

be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and
(ii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.

22. A perusal of the Explanation inserted to Section 53(1)(b) of the Insolvency and Bankruptcy Code, 2016 indicates that, for the purpose of distribution under the liquidation waterfall mechanism, the value of the security interest relinquished by a secured creditor assumes relevance in determining its entitlement. However, in the present case, the liquidation sale was conducted on 22.08.2024, whereas the amendment introducing the said Explanation came into force only on 26.05.2026. The issue that therefore arises for consideration is whether the said amendment, being clarificatory in nature, would apply to pending proceedings, or whether it operates prospectively from the date of its enforcement. In this regard, reference may be made to the recent judgment of the Hon'ble Madras High Court in *Avenue Realty v. Assistant Commissioner Srirangam (GST Circle) and Ors.*, (2026) ibclaw.in 2350 HC, wherein it was observed as under:

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 non-payment 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.

41. 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.

In Mithilesh Kumari v. Prem Bihari Khare, Section 4 of the Benami Transactions (Prohibition) Act, 1988 was, it is submitted, wrongly held to be an Act declaratory in nature for it was not passed to clear any doubt existing as to the common law or the meaning or effect of any statute. The conclusion however, that Section 4 applied also to past benami transactions may be supportable on the language used in the section."

42. The Bill was later referred to a Standing Committee, which examined the aforesaid amendment and made the following observations:

"Section 3 (30) of the Code defines a 'secured creditor' as a creditor in favour of whom security interest is created. In State Tax Officer v. Rainbow Papers Limited (Civil Appeal No. 1661 of 2020), the Supreme Court interpreted the definition of 'secured creditor' to hold that any government or governmental authority shall be a secured creditor as the charge created by a statutory law can be considered as a 'security interest'. The definition of 'security interest' under the Code means that a 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 of performance of an obligation. It is intended to be restricted to 'transactions', which means that the security interest should be created pursuant to an agreement on the part of the asset holder while giving rights to the other party. Further, 'transaction', as defined under section 3 (33), includes an agreement or arrangement in writing to transfer assets, funds, goods, or services from or to the CD. Thus, it is clear that the concept of security interest was intended to cover a consensual transaction between parties (and not any similar interest created through mere operation of a statute) Clause 2 of the Bill 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 14 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."

43. Later, the aforesaid amendment has also received the assent of the President on 06.04.2026 and published in the official gazette. The above clarificatory amendment also supports the interpretation given in in Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd., reported in (2023) 10 SCC that tax dues cannot be equated as being akin to the dues payable to a secured creditor.

23. From the aforesaid judgment, it is evident that a clarificatory amendment, enacted to remove doubts and explain the true import of an existing statutory provision, is retrospective in operation unless the legislative intent indicates otherwise. The Explanation inserted to Section 53(1)(b) of the Insolvency and Bankruptcy Code, 2016 has been introduced "for the removal of doubts" and clarifies the manner in which the entitlement of a secured creditor, who has relinquished its security interest under Section 52 of the Code, is to be determined for the purpose of distribution under the liquidation waterfall. This Adjudicating Authority is, therefore, of the considered view that the said amendment is clarificatory in nature and would apply to pending proceedings as well. Consequently, the contention of the Applicant that the distribution ought to have been made solely on the basis of the admitted claim amounts of the secured creditors cannot be accepted. The statutory scheme, as clarified by the amendment, contemplates distribution with reference to the value of the security interest relinquished by the secured creditor, and not merely on the basis of the quantum of debt admitted. Accordingly, we find no merit in the principal contention advanced by the Applicant on this issue.
24. The Applicant has levelled serious allegations against Respondent No.1, including allegations of corruption, fraud, misconduct and irregularities in the conduct of the liquidation process, and has consequently sought a direction to Respondent No.3, the Insolvency and Bankruptcy Board of India, to initiate enquiry and disciplinary proceedings against Respondent No.1. However, apart from making such assertions, the Applicant has failed to place on record any cogent material or documentary evidence to substantiate the same. Mere suspicion, conjectures or unsubstantiated allegations cannot form the basis for drawing adverse inferences against a Liquidator appointed under the provisions of the Insolvency and Bankruptcy Code, 2016, nor can they justify the initiation

of disciplinary proceedings. Respondent No.1, being an officer entrusted with the statutory duty of conducting the liquidation process in accordance with law, cannot be subjected to such allegations in the absence of credible supporting material. In the present case, this Adjudicating Authority finds that the allegations made by the Applicant are wholly unsupported by evidence and appear to be founded on assumptions arising from its dissatisfaction with the manner of distribution adopted by the Liquidator. In the absence of any prima facie material disclosing fraud, misconduct, mala fides, violation of statutory duties or professional misconduct on the part of Respondent No.1, no case is made out for issuance of any direction to the Insolvency and Bankruptcy Board of India for initiation of enquiry or disciplinary proceedings. Accordingly, the relief sought by the Applicant in this regard is rejected.

25. The Applicant has also sought adjudication and reduction of the liquidation expenses and liquidator's fees on the allegation that the amounts reflected by Respondent No.1 are excessive and unjustified. However, except for making a general assertion that certain expenses have been wrongly included or that the liquidation costs are inflated, the Applicant has failed to place any material on record to establish that the liquidation expenses claimed by Respondent No.1 were fabricated, fictitious, improperly incurred, or intended to defraud the stakeholders or creditors of the Corporate Debtor. On the contrary, Respondent No.1 has stated that the accounts relating to the liquidation process have been duly maintained, audited and placed before the stakeholders in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the regulations framed thereunder. In the absence of any cogent evidence demonstrating illegality, fraud, misappropriation or improper claim of liquidation expenses and liquidator's fees, this Adjudicating Authority finds no ground to interfere with

the same. Accordingly, the relief sought by the Applicant in this regard is liable to be rejected.

26. It is further evident from the record that the valuation adopted by Respondent No. 1 for the purpose of conducting the sale of the assets and effecting distribution of the sale proceeds was based on the reports furnished by two registered valuers appointed in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the regulations framed thereunder. A summary of the valuation reports relied upon by the Liquidator is reproduced below:

TABLE B: Summary of the Liquidation value of the Hospital land given by the IBBI registered valuers and UBI [value consider for E-auction] is stated hereunder: -

Valuer	Stakeholder	Fair Value	Liquidation Value	Value given by Union Bank of India	Auction Price
Chandrakanth					
->100.16 Ares	UBI	18,91,38,000	10,39,49,545	16,08,75,000	16,08,75,000
-> 25.90 Ares [Approx.]	MEUCB		2,84,47,055		2,84,47,055
Total		18,91,38,000	13,23,96,600	16,08,75,000	18,93,22,055
Vineeth Vijayan					
->100.16 Ares	UBI	14,18,49,000	8,90,96,784	16,08,75,000	16,08,75,000
-> 25.90 Ares [Approx.]	MEUCB		2,43,82,416		2,43,82,416
Total		14,18,49,000	11,34,79,200	16,08,75,000	18,52,57,416
Total Average Value of Land		16,54,93,500	12,29,37,900		18,72,89,736

27. A perusal of the above valuation details shows that two independent registered valuers carried out the valuation of the assets of the Corporate Debtor. It is observed that the valuations arrived at by both the valuers are substantially similar and do not disclose any significant variation in respect of the assets under consideration. The Liquidator has relied upon the said valuation reports for determining the value of the respective security interests and for carrying out the distribution exercise during the liquidation process.

28. It is pertinent to note that the Applicant was a member of the Stakeholders' Consultation Committee at the relevant point of time and was fully aware of the valuation reports relied upon by the Liquidator. The records do not disclose that the Applicant raised any objection to the said valuation reports or the valuation methodology during the liquidation process. Having acquiesced in the valuation exercise and permitted the liquidation process to proceed on the basis thereof without protest, the Applicant is, in the considered view of this Adjudicating Authority, estopped from challenging the same at this belated stage, particularly in the absence of any material establishing fraud, mala fides, arbitrariness, or patent illegality in the valuation process.
29. In view of the above, **IA(IBC)/1/KOB/2025** in **IBA/240/KOB/2019** stands **dismissed**.
30. The Registry is directed to send e-mail copies of this order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
31. A Certified Copy of this Order may be issued, if applied for, upon compliance with all requisite formalities.

Sd /-
RAVICHANDRAN RAMASAMY
(MEMBER TECHNICAL)

Sd/-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 10th day of June, 2026.

A*
D/Steno