

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1067 of 2026

[Arising out of the Impugned Order dated 13.04.2026 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench-IV in IA/2828/2025 in CP(IB) No. 3138 (MB) /2019]

IN THE MATTER OF:

Tata Capital Limited

(Erstwhile Tata Capital Financial Services Ltd.)
Office at: Tower A, 11th Floor,
Peninsula Business Park,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai-400 013

...Appellant

Versus

Mr. Sanjay Mahajan

Office at 3/3, Mohanlal Mansion,
Bhandarkar Road, Matunga Central,
Mumbai – 400 019

... Respondent

Present:

For Appellant : Mr. Abhishek Anand, Ms. Ekta Bhasin, Ms. Aasha P., Mr. Anand Amit and Mr. Gaurav Sangla, Advocates

For Respondent : Mr. Anuj P. Agarwala and Mr. Aayush Agarwala, Advocates

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The Company Appeal (hereinafter referred to as "Appeal") is filed by Mr. Mohit Prajapati the authorized signatory of the Appellant, under section 61 of the Insolvency and Bankruptcy Code, 2016 ("Code/IBC") against the impugned order dated 13.04.2026 passed by the National Company Law Tribunal, Mumbai Bench Court-IV in IA/2828/2025 in CP(IB) No. 3138

(MB)/2019, denying the Appellant the right to realize its security interest and refusing to exclude the hypothecated assets from the liquidation estate.

Submissions of the Appellant / Tata Capital Ltd

2. The Appellant, Tata Capital Limited, had sanctioned various credit facilities in favour of the Corporate Debtor. Pursuant to the same, several loan documents were executed between the parties. On account of the said documents, specific equipment and assets of the Corporate Debtor stood validly and legally hypothecated in favour of the Appellant, which created a secured interest in favour of the Appellant. The Corporate Debtor committed defaults in repayment of the outstanding dues, and its loan accounts were classified as NPA. Due to this, CIRP and subsequent liquidation proceedings were initiated against the Corporate Debtor. Corporate Debtor was placed under liquidation under Section 33(1) of the Code. Mr. Sanjay Ramdas Mahajan was appointed as Liquidator. Accordingly, the Appellant duly filed its claim in Form-D as a secured financial creditor and disclosed the details of the assets and security interest created in its favour. The Appellant had consistently communicated to the liquidator that it had elected not to relinquish its security interest and intended to realize the hypothecated assets independently. The Liquidator failed to verify and hand over the hypothecated assets to the Appellant and instead sought to include the same in the liquidation estate and proposed sale process, contrary to the statutory mandate of Section 52 of the Code. The Appellant submits that its participation in Stakeholders' Consultation Committee Meetings (SCC) meetings was without prejudice to its rights and cannot be construed as a relinquishment of security interest. The Adjudicating Authority, while passing

the Impugned Order dated 13.04.2026, failed to appreciate that the Appellant, being a secured creditor who had not relinquished its security interest, was legally entitled to realize the secured assets outside the liquidation estate. Being aggrieved by the said Impugned Order, the Appellant has preferred the present Appeal seeking setting aside of the Impugned Order to the extent it denies the Appellant's right to realize its secured assets and seeking directions to the Liquidator to exclude the hypothecated assets from the liquidation estate and hand over the same to the Appellant for enforcement of its security interest. The Appellant is a secured financial creditor with a valid and subsisting hypothecation over specific equipment, by virtue of the Terms and Conditions of the Loan Cum Hypothecation cum Guarantee Agreement dated 11th December, 2018 along with other loan documents. Despite such material being available, the Adjudicating Authority failed to consider the same in its proper perspective and instead proceeded to deny the Appellant its statutory rights. The Appellant claims that in Form – D it had clearly stated that it had not relinquished its security interest. The Appellant only after rejection of the scheme, sought to enforce the security interest vide Email dated 19th February, 2025 which is after 6 months from the liquidation commencement date. In treating the alleged non-disclosure or incomplete disclosure in the claim form is not determinative of the Appellant's rights, without considering that the existence of the security interest which was otherwise fully established through contemporaneous loan documents which were duly exhibited in the Interlocutory Application No. 2828 of 2025, and was never disputed by the Liquidator or any other stakeholder. Adjudicating Authority

failed to properly adjudicate whether a procedural lapse, if any, can override substantive rights under the Code. The Appellant's participation in the Stakeholders' Consultation Committee is not inconsistent with its intention to enforce its security interest. The Liquidator with an alleged intention, never recorded the intention of the Appellants' participation in SCC meetings itself speaks volume. The SCC is merely consultative and does not determine or extinguish the rights of secured creditors. The SCC had not taken any substantive steps since the settlement and compromise arrangement was being considered by the SCC in all the meetings. Only in 5th SCC meeting dated 4th February, 2025 the compromise and arrangement scheme came to be rejected. As the Scheme of compromise and arrangement came to be rejected that Appellant once again vide email dated 19th February, 2025 categorically intimated to the liquidator that the Appellant has not relinquished its rights. An email dated 19th February, 2025 is a valid legal and enforceable correspondence in order to substantiate the rights of Appellant to not relinquish their rights over secured assets. Instead of verifying and giving effect to the Appellant's security interest, improperly deferred the issue to the Stakeholders' Consultation Committee. The Appellant had duly intimated the Liquidator, through Form D, of its status as a secured creditor and its decision regarding relinquishment of the secured assets. The core issue requiring consideration was whether the Liquidator had acted in accordance with his statutory obligations under the Code and whether his conduct had caused prejudice to the Appellant's rights. However, these aspects have not been adequately considered or addressed in the impugned order. Learned

Adjudicating Authority has also erred in attributing undue significance to the timing of the Appellant's formal assertion of its rights, without considering the surrounding circumstances, including the pendency of the compromise and arrangement proposal under Section 230 of the Companies Act, 2013. The fact in issue arises from whether the timing of such assertion can be construed as a waiver or abandonment of rights, particularly when no prejudice is shown to have been caused to the liquidation process. There is absence of any competing claims or third-party rights in respect of the hypothecated assets at the time when the Appellant sought to enforce its security interest. In the absence of such competing equities, the Appellant ought to have been permitted to realize its secured assets independently. The Ld. Adjudicating Authority has erred in law in holding that the Appellant failed to assert its security interest on account of alleged deficiencies in Form D, and in concluding that the entries at Serial Nos. 8 and 8A are complementary to each other, without appreciating that the Appellant had expressly stated that it had not relinquished its security interest, thereby clearly evidencing its intention to realize the same under Section 52 of the Insolvency and Bankruptcy Code, 2016. The Ld. Adjudicating Authority have erred in finding that Appellant's continued participation in SCC meetings, without objection to its inclusion undermines the contention of the Appellant to stand outside the liquidation process to enforce the security interest under Section 52 of the Code. The Hon'ble Adjudicating Authority has erred in finding that the Appellant was liable to pay the amounts specified in sub regulation 2 of the Regulation 21A of Liquidation Process Regulations though the Asset was in

the custody of Liquidator and the scheme of compromise and arrangement under section 230 of the Companies Act, 2013 was under consideration.

3. The Learned Adjudicating Authority erred in law in holding that the Appellant failed to assert its security interest on account of alleged deficiencies in Form D filed with the liquidator. The Appellant submits that in Form D, at Serial No. 8A, which specifically requires disclosure as to whether the security interest has been relinquished, the Appellant has unequivocally answered "No". This clearly evidences the Appellant's intention not to relinquish its security interest over the hypothecated assets and to instead exercise its rights in terms of Section 52 of the Insolvency and Bankruptcy Code, 2016. The Appellant submits that the Learned Adjudicating Authority gravely erred in placing undue reliance on the entry at Serial No. 8 of Form D, which allegedly indicated that no security was held, without appreciating that such an entry, even if assumed to be incomplete or inadvertent, cannot override the substantive facts and documentary evidence on record. The Adjudicating Authority failed to adopt a holistic and harmonious reading of the Form, particularly when Serial No. 8A unequivocally records that the Appellant had not relinquished its security interest. However, it is submitted that Serial Number 8 deals with the "details of the Security held, the value of the security, and the date it was given" and Serial Number 8A deals with the details of "whether security interest relinquished". Thus the Ld. Adjudicating Authority failed to consider that both the information sought in format of Form D are distinct in nature and can never be complimentary to each other. In view of the aforesaid, the finding of the Learned Adjudicating Authority that

the Appellant failed to assert its security interest in Form D and/ or stipulated time as per the Code and Regulations is wholly erroneous, contrary to the material on record, and suffers from non-application of mind. The Impugned Order proceeds on an overly technical and isolated reading of Form D, while completely disregarding the express declaration of non-relinquishment as well as the extensive documentary evidence establishing the Appellant's secured status. The Appellant states that such an approach defeats the substantive rights of the Appellant under Section 52 of the Insolvency and Bankruptcy Code, 2016 and is therefore liable to be set aside, with appropriate directions recognizing the Appellant's right to realize its security interest outside the liquidation estate.

4. The Ld. Adjudicating Authority erred in law in placing reliance on Regulation 31A(2) of the IBBI (Liquidation Process) Regulations, 2016 to hold that the Appellant's participation in the Stakeholders' Consultation Committee, including in deliberating the Scheme of Compromise & Arrangement under Section 230 of the Companies Act, 2013, undermines the contention of the Appellant to explore to enforce its Security Interest under Section 52 of the Insolvency and Bankruptcy Code, 2016. The Appellant submits that the Impugned Order is ex facie erroneous in law inasmuch as it proceeds on a wrong interpretation of Regulation 31A(2) of the IBBI (Liquidation Process) Regulations, 2016. The Learned Adjudicating Authority, at paragraph 5.8 of the Impugned Order, has held that "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"

and that the Appellant's "continued participation in SCC meetings, without objection to its inclusion, undermines the contention that the Appellant always sought to stand outside the liquidation process to enforce security under Section 52 of the Code." This finding is, with respect, wholly erroneous. The Appellant submits that Section 52 of the Code confers an unequivocal and independent statutory right upon a secured creditor to either relinquish its security interest to the liquidation estate or to realize the same outside the liquidation process. This right is absolute in nature and is not made subject to participation or non-participation in the SCC. The Hon'ble Supreme Court in **Action Ispat and Power Private Limited v. Shyam Metalics and Energy Limited [(2021) 2 SCC 641]** has, at paragraph 4 of the judgment, expressly held that "the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors." This principle, affirmed by the Hon'ble Supreme Court, has direct bearing on the present case. The Appellant submits that participation in SCC meetings, including deliberations pertaining to a scheme of compromise or arrangement under Section 230 of the Companies Act, 2013, cannot be construed as an election to relinquish security or as a waiver of rights under Section 52 of the Code. Such participation is merely a commercial and protective step undertaken to safeguard the creditor's interests and remain apprised of developments in the liquidation process. It is relevant to note that the NCLAT, in **Y. Shivram**

Prasad v. S. Dhanapal & Ors. [Company Appeal (AT) (Insolvency) No. 224 of 2018, decided 28.02.2019], has held that during the liquidation process, before proceeding to sell assets of the Corporate Debtor, the Liquidator is required to take steps under Section 230 of the Companies Act, 2013 for the purpose of revival, and that creditors and stakeholders are expected to participate in this process. The Appellant further submits that the Learned Adjudicating Authority has failed to adopt a harmonious construction of the statutory framework. It is well settled that subordinate legislation, including Regulation 31A, cannot override or curtail substantive rights conferred under the Companies Act, 2013 read with the Insolvency and Bankruptcy Code, 2016. The Appellant states that Regulation 31A(2) of the Liquidation Process Regulations, being subordinate legislation, must be read harmoniously with and be subservient to Section 230 of the Companies Act, 2013, which mandates consultation and approval of all classes of creditors. Exclusion of secured creditors from deliberation while requiring their approval may lead to procedural inconsistencies, inefficiencies, and a risk of failure of the scheme. Therefore, Regulation 31A must be read in harmony with Section 230 of the Companies Act, 2013.

5. The Appellant further relies upon the judgment of the Hon'ble Supreme Court in **Swiss Ribbons Pvt. Ltd. v. Union of India [Writ Petition (Civil) No. 99 of 2018]**, wherein the Hon'ble Supreme Court, while explaining the very object and scheme of the Insolvency and Bankruptcy Code, 2016, has categorically held that the primary focus of the Code is revival and continuation of the Corporate Debtor and not its liquidation.

“12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor’s assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.”

6. In view of the aforesaid **Swiss Ribbons (Supra)**, the Appellant submits that participation in the Stakeholders’ Consultation Committee and deliberations pertaining to the Scheme of Compromise and Arrangement under Section 230 of the Companies Act, 2013 cannot be construed as waiver, abandonment, or relinquishment of the Appellant’s independent statutory rights under Section 52 of the Insolvency and Bankruptcy Code, 2016. On the contrary, the Appellant’s participation was in furtherance of the very objective of the Code, namely preservation, revival, and value maximization of the Corporate Debtor. The Learned Adjudicating Authority therefore erred in drawing an adverse inference against the Appellant merely on account of its participation in the SCC proceedings, especially when the Appellant had

consistently maintained that it had not relinquished its security interest and intended to realize the same in accordance with law. The Appellant submits that the interpretation adopted by the Learned Adjudicating Authority leads to manifestly absurd consequences. If participation in the SCC were to be treated as relinquishment or as conduct inconsistent with a Section 52 election, it would effectively compel secured creditors to abstain from all consultative processes in order to preserve their statutory rights during the deliberations under Section 230 of the Companies Act, 2013. No secured creditor could participate in a Section 230 revival process which is the legal framework for the revival of the Corporate Debtor and not the death of the Corporate Debtor. This creates an impossible and legally incoherent position for secured creditors, which is neither contemplated by the statute nor supported by any judicial precedent, and is liable to be set aside. In view of the aforesaid, it is submitted that the finding of the Learned Adjudicating Authority at paragraphs 5.8 and 5.10 of the Impugned Order that the Appellant's participation in the SCC is inconsistent with its right under Section 52 of the Code is wholly erroneous, perverse, and unsustainable in law. Accordingly, the Appellant submits that the Impugned Order deserves to be set aside to this extent, with appropriate directions recognizing that participation in the Stakeholders' Consultation Committee including in deliberations pertaining to a Section 230 Scheme of Compromise and Arrangement does not amount to relinquishment or waiver of security interest, and that the Appellant is entitled to realize its security interest

independently in accordance with Section 52 of the Insolvency and Bankruptcy Code, 2016.

7. The Hon'ble Adjudicating Authority erred in law in denying the Appellant the right to realize its security interest. The Appellant had, at all material times, expressly and consistently asserted its intention to stand outside the liquidation estate and realize its security interest under Section 52 of the Code. Moreover, by participating in the SCC Meetings the Appellant submits that such intention was communicated during SCC meetings as well as through a formal email dated 19th February 2025, which unequivocally invoked its rights over the hypothecated equipment. The Appellant submits that upon such intimation, the Respondent was statutorily bound under Section 52(3) of the Code to verify the security interest and permit the Appellant to realize the same. Instead, the Respondent failed to discharge this obligation and improperly subjected the Appellant's statutory rights to the deliberations of the SCC, which has no jurisdiction in law to decide or approve such rights. There is no requirement under the Code for SCC approval for enforcement of security interest by a secured creditor. The Appellant submits that the impugned findings effectively defeat the statutory scheme of Section 52 and render the Appellant's independent right illusory. The mere participation in SCC meetings, of compromise and settlement arrangement under Section 230 of the Companies Act, 2013 proceedings, cannot be construed as waiver or relinquishment of security. The finding to the contrary is inconsistent with the legal framework of the Code that seeks to revive the Corporate Debtor. Accordingly, the Appellant submits that the impugned

findings are based on a misapplication of the statutory framework, disregard of material evidence, and an incorrect understanding of the role of the SCC, and are therefore liable to be set aside.

8. The Appellant submits that on the grounds more particularly elaborated, and in the facts narrated hereinabove, the Appellant has made out a good case for the Impugned Order to be set aside.

Submissions of the Respondent / Liquidator

9. Respondent contends that the appeal is without merit, based on incorrect facts, unsubstantiated contentions, and a complete misreading of legal provisions.

10. A brief list of relevant dates and facts arising after admission of the CD into CIRP, which are material for adjudication of the present Appeal are as follows:

Date	Events
24.02.2023	The CD was admitted into CIRP.
13.08.2024	Upon rejection of the Resolution Plan, Liquidation process of CD was initiated under Section 33(2) of the IBC. Public announcement was made on 10.09.2024 and SCC was constituted.
19.09.2024	First meeting of SCC was conducted which was attended by the Appellant.
01.10.2024	The Appellant submitted its Claim in Form D after public announcement for a total claim of ₹1,93,41,426.26/- as on LCD/13.08.2024.
22.11.2024	The SCC was formally constituted by the Respondent. The Appellant was a member of the SCC and actively participated in each SCC meeting.

18.12.2024	The Liquidator took custody of the assets of the CD which was discussed during the 3 rd SCC meeting which was attended by the Appellant. The panchnama was also drawn in presence of the representative of the Appellant.
13.01.2025	A valuation report of the assets was also shared with the Appellant after receiving its confidentiality undertaking.
04.02.2025	A Scheme of Compromise proposed by suspended board of directors under Section 230 of the Companies Act, 2013 was rejected by 86% vote of SCC. The Appellant was a member of SCC and actively attended all SCC meetings. Its voting share is 6.19%. Annexure AB at page 338.
19.02.2025	Appellant for the first time vide its email intimated to the Respondent/Liquidator that the Appellant holds the exclusive charge on the assets and requested to exclude those from the Liquidation process, and to hand over the same in 30 days.

11. The aforesaid chronology clearly demonstrates that the Appellant had, at all material times, elected to participate in the liquidation process as a stakeholder and acted consistently with such election.

12. The Appellant failed to mention its intention to enforce its security in Form D under Regulation 21A of IBBI Liquidation Process Regulations, 2016. There is material omission in Form D. The Form D at Sr. No.8, as submitted by the Appellant had intimated 'NIL' in response to the details of the security held by it. Thereafter, in Sr. No. 8A, the Appellant had indicated 'No' in response to whether it relinquished its interest. The Ld. Adjudicating Authority rightly observed that Sr. No 8 and 8A are complementary to each other and are to be read together. When so done, the clear impression is that the Appellant has not indicated any security that its willing to relinquish. In

terms of Regulation 21 of the Liquidation Regulations, the Appellant was required to inform the Liquidator of its decision, which it has failed to do so. The Appellant's assertion that Form D duly communicated its decision is contrary to the express entries therein.

13. The Appellant's omission was neither merely procedural nor inconsequential. Regulation 21A expressly requires the secured creditor to communicate its decision in Form C or Form D within the stipulated period and prescribes the consequence of non-intimation. Documents evidencing the creation of security cannot substitute for the required election as to whether such security would be relinquished or realised. Ld. Adjudicating Authority therefore committed no error in distinguishing between the existence of security and the exercise of the option under Section 52.

14. The Appellant actively participated in the SCC Meetings without attempting to correct this position. The Appellant continued participating in SCC meetings and exercised voting rights. The Ld. Adjudicating Authority also correctly observed that a secured creditor not relinquishing its interest is not entitled to participate in SCC under Regulation 31A(2).

15. Ld. Adjudicating Authority did not hold that participation in the SCC, by itself, extinguished the Appellant's security interest. The Appellant's participation and exercise of voting rights were correctly considered as material conduct inconsistent with its subsequent claim that it had always elected to stand outside the liquidation estate, particularly in view of the first proviso to Regulation 31A(2). The allegation that the Respondent intentionally

failed to record the Appellant's purported position is denied as false and unsupported.

16. Respondent also contends that there was delay in exercising option. The Appellant only chose to exercise its right on 19.02.2025 *after rejection* of the Compromise Scheme on 04.02.2025. The same is after 6 months from liquidation commencement date. In these circumstances, the Ld. Adjudicating Authority rightly held that Regulation 21A (2) was never complied with by the Appellant.

17. The Appellant did not expressly or consistently assert an intention to stand outside the liquidation estate. No such assertion is borne out from Form D or the contemporaneous minutes of the SCC meetings. The email dated 19.02.2025 was the first clear written demand for exclusion and delivery of the assets and was issued after expiry of the statutory period.

18. Regarding alleged oral intimations of the Appellant in relation to its intention to enforce its security interest, the said contention is a bald and unsupported assertion and finds no mention in the contemporaneous minutes of the SCC meetings. The Appellant admittedly communicated its alleged election in writing for the first time only by its email dated 19.02.2025, after rejection of the Scheme of Compromise on 04.02.2025 and more than six months after the liquidation commencement date. The allegation that the Respondent deliberately failed to record any purported oral intimation is false, baseless and denied.

19. The email dated 19.02.2025 constituted a belated attempt by the Appellant to alter the position adopted by it throughout the liquidation process and could not cure its failure to intimate its decision in the manner and within the period prescribed under Regulation 21A. The obligation of the Respondent to verify a security interest under Section 52(3) arises where a secured creditor has validly and timely elected to realize such security interest in accordance with the Code and the Liquidation Regulations. The Appellant having failed to make such an election cannot invoke Section 52(3) in isolation.

20. The email dated 19.02.2025 was not a reiteration of any earlier valid election but was the first written communication whereby the Appellant sought exclusion and delivery of the assets. The timing of the email, shortly after rejection of the Scheme, supports the finding that the Appellant sought to alter its position only after the possibility of revival through the Scheme had failed. Ld. Adjudicating Authority duly considered the email dated 19.02.2025 but correctly held that it was issued beyond the prescribed period and could not retrospectively cure the Appellant's non-compliance. The Appellant's substantive rights were required to be exercised subject to the procedural and temporal framework prescribed by the Code and the Liquidation Regulations.

21. It is further denied that the Respondent subjected the Appellant's alleged right to the approval of the SCC. The issue was placed before the SCC only in the context of its effect upon the liquidation estate and the ongoing

liquidation process, and not for adjudication of the Appellant's rights. The matter was discussed in the SCC because exclusion of the assets would materially affect the liquidation estate and the interests of all stakeholders. No approval of the SCC was treated as a statutory precondition for exercise of rights under Section 52.

22. The Appellant's highly belated assertion, made only after the rejection of the Scheme of Compromise, is plainly an afterthought and cannot be permitted to unsettle the liquidation process or defeat the consequences of its own omissions and conduct. The findings returned by the Ld. Adjudicating Authority are therefore fully borne out from the record and warrant no interference by this Hon'ble Tribunal.

23. While the Appellant's status as a secured financial creditor was not in dispute, the mere existence of a security interest does not dispense with the mandatory requirement of making and communicating an election under Regulation 21A. It is specifically denied that the Appellant informed the Respondent of its decision within time or that the Respondent deliberately delayed, obstructed or prevented the Appellant from realizing its security interest. The Respondent has acted bona fide and strictly in furtherance of his statutory duties as Liquidator and in the interests of the liquidation process and all stakeholders.

24. Granting the relief sought at this belated stage would not only reward the Appellant's own omissions but would also unsettle the steps already undertaken by the Liquidator. It would grossly delay the liquidation process

and prejudice the rights and interests of the other stakeholders who have proceeded on the basis of the Appellant's conduct and the existing composition of the liquidation estate. The Appeal is therefore liable to be dismissed with exemplary costs.

25. The assets were legitimately treated as forming part of the liquidation estate consequent upon the Appellant's failure to intimate its election within the prescribed period and its subsequent conduct throughout the liquidation process. The Appellant is therefore not entitled to seek exclusion or delivery of the assets at this belated stage. The Ld. Adjudicating Authority has rightly declined to exercise jurisdiction in favour of the Appellant.

26. Ld. Adjudicating Authority rightly held that Regulation 21A (2) was never complied with by the Appellant. Despite having full knowledge of the liquidation proceedings, the taking over and valuation of the assets, and the constitution and functioning of the SCC, the Appellant neither disclosed its security interest in the prescribed manner nor exercised its alleged right to realise the same within the stipulated period. It is quite apparent that the Appellant sought to simultaneously enjoy the benefits of participation in the liquidation process and preserve an option to withdraw its security at a later stage depending upon the outcome of the Scheme.

27. No irreparable harm or prejudice can be alleged by the Appellant on account of the consequences flowing from its own omissions and conduct. On the contrary, exclusion of the assets at this advanced stage would severely prejudice the liquidation process and the interests of the remaining

stakeholders, particularly when the liquidation estate, its valuation and the steps undertaken by the Respondent have proceeded on the basis that the assets form part thereof. The balance of convenience is entirely against grant of any relief to the Appellant.

28. Learned Adjudicating Authority expressly recognized that the Appellant was a secured financial creditor and thereafter correctly identified the real issue as being whether the Appellant could, at the belated stage in question, assert its right to realize the security interest under Section 52. The existence of the underlying loan and security documents did not, by itself, establish compliance with the independent statutory requirement of making and communicating an election under Regulation 21A. The Appellant is deliberately conflating the existence of a security interest with the timely exercise of the option to realize such security interest.

29. The entries made by the Appellant in Form D were contradictory and failed to disclose the particulars and value of the alleged security interest or clearly communicate an election to realize the same. The Appellant's subsequent participation in the SCC, exercise of voting rights, knowledge of the Respondent taking custody of the assets and failure to object thereto are wholly inconsistent with the case now sought to be advanced. There is no question of any unjust enrichment of the other stakeholders.

30. The Impugned Order is a reasoned order passed after due consideration of the pleadings, documents, applicable statutory provisions and conduct of the parties. Learned Adjudicating Authority has correctly held that the

Appellant failed to duly exercise its option under Section 52 read with Regulation 21A and that its belated attempt to do so could not be accepted. The allegations of patent illegality, non-application of mind and failure to consider material documents are false and misconceived.

31. The Respondent acted in accordance with his statutory duties and treated the assets as part of the liquidation estate on account of the Appellant's failure to validly and timely exercise its option.

32. The timing of the Appellant's assertion was not assigned "undue" significance but was correctly considered in light of the express thirty-day period prescribed under Regulation 21A (unamended) and the Appellant's conduct during the intervening period. Pendency of a Scheme under Section 230 did not place the Liquidation Regulations in abeyance. It is further denied that no prejudice would be caused to the liquidation process. Exclusion of substantial assets after custody, valuation and other steps had already been undertaken would materially disrupt and delay the liquidation and prejudice the other stakeholders.

33. Recognition of the Appellant as a secured financial creditor did not create any legitimate expectation that it could exercise the option under Section 52 at any time of its choosing. The right under Section 52 is regulated by Regulation 21A and is subject to compliance with the conditions and timelines stipulated therein. No enforceable right can arise contrary to the statutory framework.

34. The existence or absence of competing security interests is irrelevant to the Appellant's failure to validly exercise its option under Section 52 read with Regulation 21A.

35. Regulation 31A(2) neither overrides nor curtails Section 230 of the Companies Act, 2013. It merely regulates the constitution and membership of the SCC during liquidation. Consultation or approval required under a Scheme of Compromise is governed by the applicable provisions of the Companies Act and does not confer an independent right upon an otherwise ineligible secured creditor to remain a member of the SCC. The alleged inconsistency is artificial and misconceived.

36. The reliance placed upon **Action Ispat and Power Private Limited (supra)** is misconceived and does not support the proposition that a secured creditor may disregard the mandatory requirements governing exercise of its option.

37. The decision in **Y. Shivram Prasad (supra)** concerning exploration of revival through Section 230 does not dispense with compliance by secured creditors with Regulation 21A or permit an otherwise ineligible secured creditor to participate and vote in the SCC while simultaneously claiming to stand outside the liquidation estate.

38. The reliance upon **Swiss Ribbons Pvt. Ltd. (supra)** is misplaced. The general object of revival and value maximisation cannot be invoked to defeat specific provisions governing liquidation or the timelines and consequences

prescribed under Regulation 21A. In fact, permitting the Appellant to withdraw substantial assets from the liquidation estate after expiry of the prescribed period would undermine certainty, value maximisation and timely completion of the liquidation process.

39. It is submitted that there are no absurd results from application of Regulation 31A(2). A secured creditor is required to make a clear statutory election. The consequences of such election, including its eligibility to participate in the SCC, are expressly provided by law. The alleged difficulty arises only because the Appellant seeks to simultaneously enjoy the benefits of participation in the liquidation process and preserve an option to withdraw its security at a later stage depending upon the outcome of the Scheme.

40. The Appellant is not entitled to any declaration that its participation in the SCC was without consequence or to any direction permitting realisation of the assets outside the liquidation estate. The said declaration, in any event being contrary to law, is untenable.

41. The obligation under Section 52(3) cannot be invoked without a valid election under Section 52 read with Regulation 21A. The Respondent was not required to permit realisation of security on the basis of an untimely and legally ineffective communication. It is denied that the Appellant's rights were made subject to approval of the SCC.

42. Ld. Adjudicating Authority did not impose any requirement of SCC approval. The Appellant's application was dismissed because it had failed to

validly and timely exercise its option, had participated throughout the liquidation process and had failed to comply with Regulation 21A(2).

43. The Appellant cannot rely upon the proposed Scheme under Section 230 to explain away its non-compliance or to retrospectively convert its participation in the SCC into an act undertaken without prejudice to a purported earlier election which was never communicated in terms of the statute.

44. The Appellant is not entitled to setting aside of the Impugned Order or to possession of the alleged hypothecated equipment. Grant of such relief would permit the Appellant to circumvent the mandatory requirements and consequences prescribed under Regulation 21A, unsettle the liquidation estate after substantial steps have already been undertaken, delay completion of the liquidation process and seriously prejudice the rights of the other stakeholders.

45. It is most respectfully submitted that the Appeal is liable to be dismissed with exemplary costs.

Analysis and Findings

46. Appellant/Tata Capital Ltd. claims that it is a secured financial creditor having a valid hypothecation over the assets of the Corporate Debtor. It submits that it had filed its claim in Form D and had stated that it had not relinquished its security interest. According to the Appellant, its participation in the stakeholders' Consultation Committee (SCC) meetings and in the consideration of the Scheme under Section 230 of the Companies Act, 2013

was without prejudice to its right under Section 52 of the Code. It submits that the email dated 19.02.2025 was a valid intimation of its decision to realize the secured assets outside the liquidation estate after the Scheme was rejected. The Appellant further contends that the existence of the security interest is established by the loan and hypothecation documents and that any deficiency in Form D cannot defeat its substantive right under Section 52. It also relies upon **Action Ispat and Power Private Limited (supra)**, **Y. Shivram Prasad (supra)** and **Swiss Ribbons Pvt. Ltd. (supra)** to submit that the Code is intended to promote revival and value maximization and that participation in the revival process cannot amount to waiver or relinquishment of its security interest.

47. The Respondent/Liquidator claims that the Appellant did not validly and timely exercise the option contemplated by Section 52 of the Code read with Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016. The liquidation commenced on 13.08.2024, whereas the Appellant submitted Form D on 01.10.2024 and did not communicate within the prescribed period its decision to realize the security outside the liquidation estate. In Form D, Serial No. 8 was stated as 'NIL', while Serial No. 8A stated 'No' to relinquishment, which, according to the Respondent, did not constitute a clear election to stand outside the liquidation estate. The Appellant thereafter participated in the SCC meetings and exercised its voting rights, including in relation to the Scheme of Compromise under Section 230 of the Companies Act, 2013. The Respondent submits that the first clear written request for exclusion and delivery of the assets was made only by email dated

19.02.2025, after the Scheme had failed on 04.02.2025 and more than six months after commencement of liquidation. The Respondent therefore contends that the belated email could not cure the statutory non-compliance. It is further submitted that the existence of a security interest is distinct from the timely exercise of the statutory option and that Section 52(3) cannot be invoked without a valid election under Regulation 21A. The Respondent submits that the Impugned Order is reasoned and calls for no interference.

48. We have considered the submissions of the learned Counsel for the Appellant and the learned Liquidator and have perused the record placed before us. The principal question which arises for consideration is whether the Appellant, as a secured creditor, validly and within the prescribed period exercised its option under Section 52 of the Code to stand outside the liquidation estate and realize the secured assets.

49. There is no dispute that the Appellant is a secured financial creditor and that the hypothecation documents relied upon by it record a security interest over the concerned assets. However, the existence of a security interest and the exercise of the statutory option to realize that security outside the liquidation estate are two distinct matters. The present Appeal is required to be examined with reference to the latter issue.

50. Before proceeding further let us extract the provisions of Section 52(2) of the Insolvency and Bankruptcy Code and also Regulation 21A, 31A(2) and 39BA of Liquidation Process Regulations, which provides for the presumption of security interest and which are helpful in deciding the case in hand.

“52. Secured creditor in the liquidation proceedings

- (1) A secured creditor in the liquidation proceedings may—
- (a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or
 - (b) realise its security interest in the manner specified in this section.
- (2) Where the secured creditor realizes security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realized.”

[Prior to amendment of 2026]

21A. 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 deemed to be relinquished to the liquidation estate.”

[Prior to latest amendments of 2026]

Regulation 31A: Stakeholders’ consultation committee.

- (1) XXX
- (2) The voting share of a member of the consultation committee shall be in proportion to his admitted claim in the total admitted claim:
Provided a secured creditor who has not relinquished his security interest under section 52 shall not be part of the consultation committee;

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

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

(3)....”

“Regulation 39BA: Assessment of Compromise or Arrangement.

39BA. (1) While deciding to liquidate the corporate debtor under section 33, the committee shall examine whether to explore compromise or

arrangement as referred to under sub -regulation (1) of regulation 2B of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and the resolution professional shall submit the committee's recommendation to the Adjudicating Authority while filing application under section 33.

(2) Where a recommendation has been made under sub-regulation (1), the resolution professional and the committee shall keep exploring the possibility of compromise or arrangement during the period the application to liquidate the corporate debtor is pending before the Adjudicating Authority.”

51. The liquidation commenced on 13.08.2024. The record shows that the Appellant submitted Form D on 01.10.2024. In the said Form, Serial No. 8 contained an entry of 'NIL' in relation to the details of security held, whereas Serial No. 8A contained the answer 'No' to the question whether the security interest had been relinquished. The Adjudicating Authority considered these entries together and held that the Appellant had not clearly communicated the option to realize its security interest outside the liquidation estate. We find no error in this approach.

52. The statutory scheme requires a secured creditor who seeks to stand outside the liquidation estate to exercise and communicate its option within the prescribed period. The Appellant admittedly did not make a clear written request for exclusion of the hypothecated assets and their delivery for realization within that period. The first clear written communication relied upon by the Appellant is the email dated 19.02.2025. This communication was issued after the Scheme of Compromise under Section 230 of the Companies Act, 2013 had been rejected on 04.02.2025. Thus, the Appellant

did not opt to stand outside the liquidation estate within the prescribed thirty days and waited until the Scheme had failed.

53. The explanation of the Appellant that it had orally communicated its intention or that the entries in Form D were sufficient cannot be accepted in the facts of the present case. There is no contemporaneous record placed before us showing a clear and valid election within the prescribed period. The subsequent email dated 19.02.2025 cannot retrospectively cure the failure to exercise the statutory option within time.

54. The participation of the Appellant in the SCC meetings is also a relevant circumstance. The Appellant remained a member of the SCC, attended its meetings and exercised its voting rights – to further confirm that it has relinquished its security interest else would not have been part of SCC per Regulation 31A. The Appellant was aware of the taking of custody of the assets and the valuation process. It did not, during the relevant period, take the position in a manner and within the time prescribed by Regulation 21A that the assets were to be excluded from the liquidation estate for independent realization. The conduct of the Appellant, therefore, has to be considered along with the entries made in Form D and the belated email dated 19.02.2025.

55. We are unable to accept the submission that the pendency of the Scheme under Section 230 of the Companies Act, 2013 kept the statutory requirements of the liquidation process in abeyance. The consideration of a Scheme for revival and value maximization does not dispense with the

statutory requirement applicable to a secured creditor seeking to realize its security outside the liquidation estate. The Appellant could not retain an uncommunicated option and seek to exercise it after the Scheme had failed.

56. The judgments relied upon by the Appellant, including Action **Ispat and Power Private Limited (supra)**, **Y. Shivram Prasad (supra)** and **Swiss Ribbons Pvt. Ltd. (supra)**, emphasize the object of revival, continuation and value maximization under the Code. Those principles cannot be read as dispensing with the specific statutory requirements governing the exercise of an option under Section 52 read with Regulation 21A. The object of the Code has to operate within the statutory framework governing liquidation.

57. The submission that no prejudice was caused because there were no competing claims over the assets also does not advance the Appellant's case. The requirement of making the election within the prescribed period is part of the statutory scheme. Its applicability does not depend upon the existence of a competing security interest. Once the Appellant failed to exercise the option in the prescribed manner and within the prescribed period, it cannot seek to revive that option at a later stage on the ground that no third-party equity had intervened.

58. We also do not find merit in the contention that the Liquidator made the Appellant's right subject to approval of the SCC. The record, as noticed in the submissions of the Liquidator, shows that the issue was considered in the context of its effect upon the liquidation estate and the interests of the stakeholders. The Appellant's application was rejected by the Adjudicating

Authority primarily because the statutory option had not been validly and timely exercised. The requirement of SCC approval was not treated as a statutory precondition for exercise of the right under Section 52.

59. We further observe that per combined reading of Section 52(2) of the Insolvency and Bankruptcy Code and also Regulations 21A, 31A(2) and 39BA of Liquidation Process Regulations, the Appellant cannot be permitted to simultaneously participate in the liquidation process and preserve an option to withdraw the secured assets at a later stage depending upon the result of the Scheme. Here we observe that the appellant had not relinquished its security interest and continued to participate in the stakeholder consultation committee meeting and also participated in the scheme of compromise and arrangement scheme. Thereafter only, it elected to stand outside, which is totally impermissible as per the existing Code and regulations. The regulation governing the scheme of compromise and arrangement (39BA) doesn't grant extension of time for Appellant with the security interest to stand out of the liquidation estate at a later point in time. Such a course would unsettle the liquidation estate after custody and valuation of the assets and after other steps in the liquidation process had been undertaken. The Liquidator was justified in treating the assets as part of the liquidation estate in view of the Appellant's failure to make a timely and valid election.

60. The distinction between the existence of a security interest and the exercise of the statutory option is material. The loan documents may establish the existence of the security, but they do not by themselves establish

compliance with the separate requirement of communicating the election contemplated by Regulation 21A. The Adjudicating Authority has correctly applied this distinction.

61. On an overall consideration of the record, we are satisfied that the Appellant did not validly exercise its option to stand outside the liquidation estate within the prescribed thirty days. The Appellant waited until after the Scheme of Compromise had failed and thereafter sought to assert its right by email dated 19.02.2025. Such a belated assertion cannot be accepted to the prejudice of the liquidation process and other stakeholders.

62. We, therefore, find no infirmity in the Impugned Order dated 13.04.2026 passed by the Adjudicating Authority in IA/2828/2025 in CP(IB) No. 3138 (MB)/2019. The submissions of the Appellant seeking exclusion of the hypothecated assets and permission to realize the security interest outside the liquidation estate are unsustainable. The submissions of the Liquidator that the Appellant failed to comply with the statutory requirement and that the belated exercise of the option cannot be permitted are supported by the statutory scheme and the facts borne out from the record.

63. In view of the foregoing discussion, we are of the considered view that the Appeal does not merit interference by this Appellate Tribunal. The Impugned Order calls for no interference.

Conclusion

64. For the reasons stated above, the Appeal is dismissed. The Impugned Order dated 13.04.2026 passed by the Adjudicating Authority in

IA/2828/2025 in CP(IB) No. 3138 (MB)/2019 is affirmed. The Appellant is not entitled to exclusion of the hypothecated assets from the liquidation estate or to realize the said assets outside the liquidation process on the basis of its belated communication dated 19.02.2025.

Order

65. The Appeal is dismissed. The Impugned Order dated 13.04.2026 passed by the National Company Law Tribunal in IA/2828/2025 in CP(IB) No. 3138 (MB)/2019 is affirmed. All related IAs are also accordingly disposed of. No order as to costs.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
October 06, 2026.

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