

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 210 of 2024 & I.A. No. 718 of 2024

(Arising out of the Order dated 19.12.2023 passed by the National Company Law Tribunal, Mumbai Bench, Court-II in IA No. 2620/2023 in CP (IB) No. 2043/ MB/ C-II/ 2018)

IN THE MATTER OF:

Bizloan Private Limited

Through its Director, Vikram Diwan Regd.

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Also at: 132, Qutub Plaza, DLF CityPhase-1,
Gurugram-122002

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...Appellant

Versus

**Mr. Amit Chandrashekhar Poddar [Liquidator
For Autocop (India) Private Limited]**

R/o.: Akshat, 7, Vijay Nagar, Katol Road, Nagpur,
Maharashtra- 40013

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...Respondent

Present

For Appellants: Mr. Mohit Choudhary, Mr. Jayesh Gupta, Mr. Arjun Arora & Mr. Mohit Gulia, Adv.

For Respondents: Mr. Bharat Gupta, Mr. Varun Tyagi, Mr. Saurabh Khanijon & Mr. Ishan Srivastava, Adv.

J U D G E M E N T

(03.07.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by Bizloan Private Limited who is the Financial Creditor for providing credit facilities in form of sales bill discounting

(SBD) and purchase bill discounting (PBD) of Rs. 1 Crore in aggregate to the Autocop (India) Private Limited i.e., the Corporate Debtor (now under liquidation) against the Impugned Order dated 19.12.2023 passed in IA No. 2620/2023 in CP (IB) No. 2043/ MB/ C-II/ 2018 by National Company Law Tribunal, Mumbai Bench (Court-II) (“**Adjudicating Authority**”) which classified the Appellant as Unsecured Creditors instead of Secured Financial Creditor.

2. Shorn of unnecessary details, it is noted that the Corporate Insolvency Resolution Process (‘**CIRP**’) was initiated against the Corporate Debtor by the Adjudicating Authority vide order dated 16.03.2022 subsequent to which the IRP published Form-A on 24.03.2022. The Appellant filed the claims in Form C with IRP on 04.04.2022 which were admitted in full by Resolution Professional without indicating whether these are secured or unsecured.

3. The Appellant also submitted that he received final Resolution Plan dated 16.12.2022 from the Respondent vide an email dated 20.12.2022 when the Appellant came to know that he has been classified as Unsecured Creditor instead of Secured Financial Creditor. Aggrieved by the same, the Appellant filed an IA but by the time, the Corporate Debtor had moved into liquidation proceeding vide order dated 19.05.2023 passed by the Adjudicating Authority.

4. The Appellant subsequently filed an IA No. 2620/2023 in CP (IB) No. 2043/ MB/ C-II/ 2018 under section 60(5)(b) of the Code before the Adjudicating Authority seeking direction that the Appellant be treated as Secured Financial

Creditor. The Impugned Order, however, rejected the IA No. 2620/2023 of the Appellant holding that the Appellant cannot be treated as Secured Financial Creditor. Aggrieved by the same, the Appellant has filed the present appeal before us.

5. It is case of the Appellant that the charge is duly registered with CERSAI records which is (publicly accessible). Thus, the Appellant ought to have been classified as a secured financial creditor. The Appellant submitted that the same was brought to the notice of the Respondent to which the Respondent sought for a legal opinion dated 06.02.2023, which categorically records the Appellant as a secured financial creditor. Furthermore, the same was circulated in CoC by the Respondent, however, the Appellant was treated as Unsecured Creditor only.

6. The Appellant alleged that the Adjudicating Authority failed to appreciate Section 52(3) of the Code r/w Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 which recognizes other modes of registration of charge/proving security interest including registration of charge with CERSAI.

7. The Appellant assailed that the Adjudicating Authority has failed to appreciate that Section 238 of the Code over rides the provisions of other statutes. The Appellant further argued that, even if there exists dichotomy in the two acts, it is of no relevance as the present proceedings are Liquidation proceedings under the Code and not winding up proceedings. The Appellant emphatically submitted that his case is squarely covered under Clause (c) of Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016.

8. The Appellant pleaded that the Respondent is relying on Section 52 (1) of the Code, that itself states the word 'Secured Creditor', in that capacity the position of either relinquishing or realising is with a Secured Creditor, hence, in his own submissions of the Respondent, the Respondent has accepted the stand of the Appellant as a secured creditor.

9. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and allow his appeal.

10. On the other hand, the Respondent denied all the averments made by the Appellant as misleading and incorrect.

11. It is the case of the Respondent that the Appellant was rightly classified as Unsecured Financial Creditor since the charge was not registered with the RoC under Section 77 of the Companies Act, 2013 and it was only registered with the CERSAI. The Respondent highlighted that Section 77 (3) of the Companies Act, 2013 starts with non-obstante clause which reads “notwithstanding anything contained in any other law for the time being in force”, as such the Companies Act, 2013 prevailed over the Code and its regulations.

12. The Respondent emphasized that he was duty bound to follow the provision of Section 77 (3) of the Companies Act, 2013 as the word ‘shall’ has been used which gives pre-eminence and pre-dominance over provisions of the Code and Liquidation Regulations.

13. It is further the case of the Respondent that Section 77 of the Companies Act, 2013 is a specific provision which deals with the particular situation and

therefore in any event is always over-riding the special laws like the Code. The Respondent also pleaded that Section 77(1) and (3) of the Companies Act, 2013 are without any ambiguity and overrides Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 and further Section 77 (3) of the Companies Act, 2013.

14. The Respondent also argued that during liquidation, Section 52 (1) of the Code provides two alternatives to a Secured Creditor: (a) either to relinquish its security interest to the liquidation estate and receive the sale proceeds in terms of Section 53, or (b) to 'realise' its security interest in the manner specified in Section 52. It is only when Secured Creditor chooses option (b) i.e. to realise its security. does other sub-Sections of 52 gets activated. Other sub-Sections of Section 52 are not applicable to a Secured Creditor who chooses to relinquish its security interest to the liquidation estate. The Respondent argued that therefore, Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016, which is an outcome of sub-Section (3) to Section 52, does not come into picture at all in such a case and so also in the present case. The Respondent further submitted that Section 52 (3), which stipulates that before any security interest is realized by the secured creditor, the liquidator shall verify such security interest and permit secured creditor to realise only such security interest, existence of which may be proved either by records maintained by information utility or by such other means as may be specified by the Board.

15. It is also the case of the Respondent that the language of Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 uses the word "may prove", which is discretionary and not mandatory, as against Section 77 (3) of the Companies Act, 2013 which uses the word "shall" which is mandatory and binding. The Respondent referred to *Lalita Kumari v. Government of Uttar Pradesh and Ors.*, [(2014) 2 SCC 1] and *Vidarbha Industries Power Limited v. Axis Bank Ltd.* [(2022) 8 SCC 352].

16. The Respondent further pleaded that even Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 is inconsistent with Section 77 of the Companies Act, 2013, then it is Section 77 of the Companies Act, 2013 which will over-ride Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016. The Respondent stated that as it is settled law that Regulation or Rules, which are framed under the aegis of the Parent Act, cannot over-ride the provisions of the parent Act. In any event, Liquidation Regulation, which is the creature of the Code (Section 240 of the Code), will have to give way to the provisions of the Parent Act i.e. Section 255 of the Code, which has given more weightage to Section 77 (3) of the Companies Act, 2013.

17. The Respondent tried to elaborate the difference between the role of CERSAI and ROC and stated that with ROC, instrument creating charge is also registered and a Certificate is issued whereas, with CERSAI only details of the Charge are uploaded, and no document/instrument is provided. The Respondent stated that provisions relating to CERSAI, incorporated in Section 20 (4) of the

SARFAESI Act, 2002 is only in addition to and not in derogation to the provisions of the Companies Act, 2013 and any other law, and it shall not affect the priority of charges or validity thereof under those Acts or laws.

18. In the opinion of the Respondent the Committee of Creditors ('CoC') exercising its commercial wisdom has taken a conscious decision that Appellant cannot be treated as Secured Financial Creditor and same should be respected.

19. Concluding his pleadings, the Respondent requested this Appellate Tribunal to dismiss the appeal.

Findings

20. We have heard the argument of all the concerned parties and perused the record made available.

21. We note that Section 52(3) of the Code pertains to the existence of security and states that security 'may be proved either by the 'Records provided by the Information Utility' or by 'other means specified by the Board. The Board has exercised this power vide Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 which provides 3 ways in which the security 'may be proved'. This includes under Regulation 21(a), 'records available with the information utility' and under Regulation 21(b), the ROC under section 77(3) of the Companies Act, 2013. Regulation 21(c) clearly mentions another way i.e., Proof of registration with the CERSAI. Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 came into force on 15.12.2016.

22. The only legal issue involved in the present appeal is whether the Appellant should have been treated as Secured Financial Creditor based on the charge created in favour of the Appellant on the basis of information of its charge over the assets of the Corporate Debtor provided in Central Registry of Securitisation Asset Reconstruction and Security Interest of India ('CERSAI') without getting such charge and instrument, creating such charge over the assets of the Corporate Debtor registered under Section 77 of the Companies Act, 2013 with Registrar of Companies ('RoC'). Thus, we need to look into the relevant provisions of various law dealing with registration of charge and impact of registration or non registration of such charge during liquidation proceedings of the Corporate Debtor .

23. We note that Section 52 of the Code which reads as under :-

“Section 52. Secured creditor in 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 realises 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 realised.

(3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such

security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either—

(a) by the records of such security interest maintained by an information utility; or

(b) by such other means as may be specified by the Board.

(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

(5) If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing of the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.

(6) The Adjudicating Authority, on the receipt of an application from a secured creditor under subsection (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.

(7) Where the enforcement of the security interest under subsection (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall—

(a) account to the liquidator for such surplus; and

(b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

(8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

(9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause (e) of sub-section (1) of section 53.

(NOTE: Above provision become effective from 15.12.2016)

(Emphasis Supplied)

24. Now, we note non-obstante clause as stipulated in Section 238 of the Code which reads as under :-

“Section 238: Provisions of this Code to override other laws.

238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

(NOTE: Above provision become effective from 01.12.2016)

(Emphasis Supplied)

25. Now, we note Section 255 of the Code which reads as under :-

“Section 255 of the Code : Amendments of Act 18 of 2013.

255. The Companies Act, 2013 shall be amended in the manner specified in the Eleventh Schedule.

(Effective from 15.11.2016.)

26. Now, we note Regulation 21 IBBI (Liquidation Process) Regulations, 2016 which reads as under:-

“Regulation 21 : Proving security interest.

21. The existence of a security interest may be proved by a secured creditor on the basis of-

(a) the records available in an information utility, if any

(b) certificate of registration of charge issued by the Registrar of Companies; or

(c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India.”

(NOTE: Above provision become effective from 15.12.2016)

(Emphasis Supplied)

27. We look into Section 77 of the Companies Act, 2013 which reads as under:-

“Section 77 in The Companies Act, 2013

77. Duty to register charges, etc.—(1) It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company

and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation:

[Provided that the Registrar may, on an application by the company, allow such registration to be made— (a) in case of charges created before the commencement of the Companies (Amendment) Act, 2019, within a period of three hundred days of such creation; or

(b) in case of charges created on or after the commencement of the Companies (Amendment) Act, 2019, within a period of sixty days of such creation,

on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified—

(a) in clause (a) to the first proviso, the registration of the charges shall be made within six months from the date of commencement of the Companies (Amendment) Act, 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such ad valorem fees as may be prescribed.]

Substituted by Act 22 of 2019, S. 11, for the first and second provisos (w.r.e.f. 2-11-2018). Prior to their substitution, the first and second provisos read as under: - "Provided that the Registrar may, on an application by the company, allow such

registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed:

Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87:".

Provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered:

[Provided also that this section shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India.]

The proviso ins. by Act 1 of 2018, s. 18 (w.e.f. 7-5-2018)

(2) Where a charge is registered with the Registrar under sub-section (1), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.

(3) Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator [appointed under this Act or the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as the case may be,] or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under subsection (2). [2. Ins. by Act 31 of 2016, s. 255 and the Eleventh Schedule (w.e.f. 15-11-2016)]

(4) Nothing in sub-section (3) shall prejudice any contract or obligation for the repayment of the money secured by a charge.”

(Emphasis Supplied)

28. Now, we shall go into Section 20 of SARFAESI Act, 2002 which reads as under :-

“Section 20: Central Registry. (SARFAESI Act, 2002)

20. (1) The Central Government may, by notification, set up or cause to be set up from such date as it may specify in such notification, a registry to be known as the Central Registry with its own seal for the purposes of registration of transaction of securitisation and reconstruction of financial assets and creation of security interest under this Act.

(2) The head office of the Central Registry shall be at such place as the Central Government may specify and for the purpose of facilitating registration of transactions referred to in sub-section (1), there may be established at such other places as the Central Government may think fit, branch offices of the Central Registry.

(3) The Central Government may, by notification, define the territorial limits within which an office of the Central Registry may exercise its functions.

(4) The provisions of this Act pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908 (16 of 1908), the Companies Act, 1956 (1 of 1956), the Merchant Shipping Act, 1958 (44 of 1958), the Patents Act, 1970 (39 of 1970), the Motor Vehicles Act, 1988 (49 of 1988), and the

Designs Act, 2000 (16 of 2000) or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws.”

(NOTE: Above provision become effective from 21-6-2002)

(Emphasis Supplied)

29. From above, we note that the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) was set up under section 20 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act, 2002**). CERSAI is a centralised online platform created by the Reserve Bank of India (RBI) to maintain records of all types of securities interests created over any type of property, including movable and immovable properties and it acts as a comprehensive database that stores details of all securitisations, reconstructions, and security interests created by banks and other financial institutions. We understand that CERSAI helps lenders to check whether a property has already been used as collateral before granting loans to borrowers, thus CERSAI helps in reducing fraudulent activities such as multiple financing, benami transactions, and others and provides transparency and efficiency in the loan processing system, making it easier for lenders to track and manage their assets.

30. After noting above various law relating to Registration charges over amounts of the Corporate Debtor, we need to understand the inter-play of Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016, r/w Section 52, 255 and 238 of the Code vis-à-vis Section 20(4) of the SARFAESI Act, 2002

vis-à-vis Section 77 of the Companies Act, 2013 and its implications for a financial creditor's "secured" status.

31. The moot question is whether a financial creditor automatically becomes a "Secured Financial Creditor" solely by having its "Charge" (security interest) registered with CERSAI or if it is also mandatory to register that charge and the instrument creating it with the RoC under Section 77 of the Companies Act, 2013.

32. We note that a financial creditor under the Code is a person to whom a financial debt is owed, which includes a debt along with interest, if any, that has been disbursed against the consideration for the time value of money and the Secured Financial Creditor is a financial creditor whose debt is secured by a charge on the assets of the corporate debtor. Being "secured" give creditors a higher priority in the event of insolvency or liquidation of the Corporate Debtor compared to unsecured creditors.

33. We also take into consideration that a charge is essentially a security interest created by a company on its assets (movable or immovable, tangible or intangible) in favour of a lender to secure a debt. It can be a mortgage, hypothecation, pledge, etc. We have already noted that RoC is responsible for registering charges created by the companies and maintaining records related to them, including charges created by companies. We consciously note that Section 77 of the Companies Act, 2013 mandates every company creating a charge on its property or assets (whether in India or outside) to register the particulars of the charge and the instrument creating it with the RoC. The registration typically

needs to be done within 30 days of the charge's creation, with provisions for extended periods subject to additional fees. We do note that Section 77(3) of Companies Act, 2013 states that no charge created by a company shall be taken into account by a liquidator or any other creditor unless it is duly registered under sub-section (1) of Section 77 of Companies Act, 2013 and a certificate of registration is issued by the RoC.

34. Registration of charge may highlight a potential conflict, as far as requirement stipulated under Section 77 of Companies Act, 2013 vis-à-vis under Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016. We have already observed that CERSAI provides a central repository for security interests, aiding in fraud prevention and transparency for financial institutions whereas, Section 77 of the Companies Act, 2013, explicitly requires registration of charges with the RoC for them to be recognized in insolvency/liquidation scenarios.

35. The core of the dispute lies in whether CERSAI registration can substitute or override the requirement of RoC registration under Section 77 of Companies Act, 2013 for a financial creditor to become "secured," especially when it comes to the priority of claims during CIRP or Liquidation proceedings under the Code. We also need to ponder, if a charge is registered only with CERSAI but not with the RoC, would a liquidator or CoC acknowledge the "secured" status of that financial creditor or reject the same.

36. Secured creditors generally have a higher priority for repayment from the corporate debtor's assets compared to unsecured creditors. The classification as

"secured" is therefore vital for a creditor's recovery prospects. It is also fact that Companies are legally obligated to comply with Section 77 of Companies Act, 2013 and non-compliance of the same can have serious consequences, impacting the validity and enforceability of the charge.

37. Based on legal interpretation, it may be argued, that at broad level, wording of the Companies Act, 2013 under Section 77, Registration of charge will generally takes precedence over CERSAI registration when it comes to a financial creditor claiming itself to be a "Secured Financial Creditor" in the context of insolvency or liquidation of a company. However, this needs to be looked into more deeply before coming to any concrete conclusion.

38. At this stage, we would also like to see the impact of the conflicting non obstante clause as mentioned in the Code vis-à-vis in the Companies Act, 2013. A "non-obstante clause" signifies that the provision it introduces will prevail over any other law that might be inconsistent with it.

39. We observe that Section 77(3) of the Companies Act, 2013 begins with a non-obstante clause, i.e. "Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by a liquidator or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration is issued by the Registrar."

We need to understand that while CERSAI registration is crucial for lenders' for exercising rights under SARFAESI Act, 2002 and it may not relieve a company from its statutory obligation to register charges with the RoC under

Section 77 of the Companies Act, 2013. For a financial creditor to claim the full benefits and priority of being a "Secured Financial Creditor" in CIRP or Liquidation process, registration of the charge with the RoC under Section 77 of the Companies Act, 2013, is generally considered indispensable.

40. On the other hand, we also observe that Section 255 of the Code is crucial because it amends various other laws, including the Companies Act, 2013, to align them with the provisions of the Code. These amendments were made to ensure consistency and to facilitate the smooth functioning of the insolvency framework. Section 255 of the Code and the Eleventh Schedule of the Code introduced amendments to the Companies Act, 2013. These amendments primarily focus on shifting jurisdiction over winding up from the High Courts to the NCLT and ultimately transferring it to the IBC framework and ensuring that the provisions for CIRP are governed by the Code.

41. The principle of "later law prevails" (*Lex Posterior Derogat Priori*) is a general rule of statutory interpretation. If there are two laws covering the same subject matter, and they are inconsistent, the later enacted law is generally presumed to override the earlier one. Applying this principle in the present appeal, we note that the Code came into force w.e.f. 01.12.2016 i.e., later than the Section 77(3) of the Companies Act, 2013 which came into force on 15.11.2016. As discussed earlier, Section 238 of the Code (the non-obstante clause) states that the Code's provisions shall have effect "notwithstanding anything inconsistent therewith contained in any other law." The prevailing judicial view is that the

IBC, which is a self-contained code and being a special law for insolvency and a later enactment, overrides general laws or earlier special laws to the extent of inconsistency in matters of insolvency (including liquidation) resolution. On the interplay between non-obstante clauses between different statutes. We take into consideration that it was held in the case of *Owners and Parties Interested in the Vessel M.V. Polaris Galaxy vs. Banque Cantonale De Geneva* passed in Civil Appeal Nos. 6897-6898 of 2022 (Arising out of SLP (C) Nos. 19314-19315 of 2021) by the Hon'ble Supreme Court of India that a non- obstante clause in a subsequent enactment prevails over one in a prior law.

42. Looking from different angle, Section 77(3) of the Companies Act, 2013 may not really be "inconsistent" with the Code as Section 77(3) of the Companies Act, 2013 which provides for a charge to be "taken into account by a liquidator or any other creditor.", whereas the Code deals with the process of insolvency resolution or Liquidation process and the prioritization of creditors. We need, therefore to consider harmonious construction and interpret laws harmoniously. Thus, there may exist the interplay between:

- * Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016

- * Section 77 of the Companies Act, 2013

- * Section 20 of SARFAESI Act, 2002

43. Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 have been framed by the IBBI under the powers granted by the Code and provide the detailed procedural framework for the liquidation process. We note that

Regulation 21 is relating to Proof of Claim by a Secured Creditor. This regulation deals with how a secured creditor submits its claim during liquidation. It requires a secured creditor to submit proof of their security interest, including evidence of its creation.

44. On the other hand, Section 77 of the Companies Act, 2013 mandates the registration of charges created by companies with the RoC and Section 77(3) stipulate that, "Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by a liquidator or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration is issued by the Registrar."

45. We note that the purpose of SARFAESI Act, 2002 is to allow secured creditors (banks/financial institutions) to enforce their security interests without court intervention. The SARFAESI Act, 2002 also has Section 35 (Non-Obstante) which state "The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law...". Similarly, Section 26D of SARFAESI Act, 2002, mandates registration of security interests with CERSAI to make them enforceable against third parties. However, it also explicitly states this is "notwithstanding anything contained in any other law for the time being in force relating to registration of charges."

46. Thus, the complexity arises because all these laws have their own "non-obstante" clauses and specific purposes.

47. The overarching principle remains that the Code, being a special law for insolvency, and self-contained code overrides other laws to the extent of inconsistency in matters of insolvency resolution.

48. As already discussed earlier, the basic issue is whether Section 77 (3) of the Companies Act, 2013 which mandates registration of charge will prevail over Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 or vice-versa. We have already noted that the purpose of registration of charge with the RoC under Section 77 is distinct and non compliance result into consequential implication for concerned stakeholders, whereas the registration with CERSAI in terms of Section 20 of SARFAESI Act, 2005 is for realisation of security interest by banks and NBFC and help in preventing frauds since the lender becomes alert so that he does not lend money on the assets already hypothecated or mortgaged.

49. To recapitulate Regulation 21 is for proving existence of security interest which may be proved by security creditor on the basis of (a) the records available in the information utility, if any, (b) certificate of registration of charge issued by the Registrar of Companies or (c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest and India.

50. Thus, it is clear that Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 provides three alternatives certification of registration of charge issued by RoC or proof of registration of charge with CERSAI. It is utmost important to note that the word “or” has been used in Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 sub-clause (b) and sub-clause (c)

which make it clear that the security interest may be proved either by registered charge maintained by RoC or registration of charge has entered with CERSAI. We have already noted that Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016 came into force with effect from 15.12.2016. Thus, this amendment is later than Section 77(3) of Companies Act, 2013 which was done on 15.11.2016.

51. Based on above laws and facts, it becomes clear that security interest by the Creditors can also be proved if the same is available in CERSAI and is not completely and exclusively dependent on charge registered with RoC under Section 77 of the Companies Act, 2013.

52. In the present appeal before us, the Appellant has indeed entered charge over the assets of the Corporate Debtor with CERSAI, however, the same is not registered with the RoC under Section 77(3) of the Companies, 2013.

53. Thus, we hold that the Appellant should have been treated as secured Financial Creditor based on the registered charge with CERSAI in accordance with Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016.

54. In fine, the appeal succeeds and the Impugned Order is set aside. The original petition bearing in IA No. 2620/2023 in CP (IB) No. 2043/ MB/ C-II/ 2018 is restored back. Both the parties are directed to appear before the Adjudicating Authority on **14.07.2025**, who shall take further action in accordance with law.

55. No cost. I.A., if any, are closed.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Justice Mohammad Faiz Alam Khan]
Member (Judicial)**

**[Mr. Naresh Salecha]
Member (Technical)**

Sim