IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V

I.A. No. 796 of 2024
In
C.P. No. 1330 of 2020

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016

I. A. No. 796 of 2024

Unity Small Finance Bank Limited (Formerly Known As Punjab & Maharashtra Cooperative Bank Ltd

....Applicant

Versus

Sripatham Venkatasubramanian Ramkumar Resolution Professional for Privilege Industries Limited

.... Respondent

In The Matter Of

Unity Small Finance Bank Limited (Formerly Known As Punjab & Maharashtra Cooperative Bank Ltd.)

... Petitioner

Versus

Privilege Industries Ltd.

...Corporate Debtor

Order Dated: 28.06.2024

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)
Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: Counsel Alok Dhir (PH)

For the Resolution Professional: Sr. Adv. Gaurav Joshi (PH)

ORDER

*The present Interlocutory Application (I.A.) has been filed by Unity Small Finance Bank Limited (Formerly Known As Punjab & Maharashtra Cooperative Bank Ltd) (**Hereinafter referred to as the "Applicant"**) seeking the following reliefs:*

a. *Allow the instant Application filed by the Applicant; and*
b. *Stay the distribution of the amounts by SNJ Breweries Private Limited ("Successful Resolution Applicant') as proposed under Resolution Plan (as amended), dated 08.08.2023, till the IA No. 698/2024 is disposed off by this Hon'ble Tribunal; and/or*
c. *Pass any other Order that this Ld. Tribunal deems necessary in the interests of justice.*

Brief Facts and Submission of the Applicant

1. The Applicant had filed this Application seeking stay on the distribution of amounts under the Resolution Plan submitted by SNJ Breweries Pvt. Ltd., approved by this Hon'ble Tribunal vide order dated 23.02.2024 till IA 698/2024 filed by the Applicant is finally adjudicated upon by this Hon'ble Tribunal.
2. The Applicant submitted that IA No. 698/2024, seeks quashing of the decision of the Resolution Professional/Respondent, dated 30.01.2024, wherein the Respondent had arbitrarily and illegally reclassified the entire claim of the Applicant from secured financial

creditor to unsecured financial creditor. Furthermore, due to the action of the Respondent RP, the Applicant herein despite having an admitted claim of Rs. 142,10,78,941/- and voting share of 20.39% in the Committee of Creditors, is receiving only an amount of Rs. 1.72. crores under the Resolution Plan, whereas on the other hand, the other financial creditor (Omkara Asset Reconstruction Pvt. Ltd.) whose admitted claim amount is Rs. 556.95 crores, is being paid an amount of Rs. 379 crores under the Resolution Plan.

3. It is pertinent to list down the chronology of relevant events at this juncture for grant of reliefs as sought in the instant Application:-

- Punjab & Maharashtra Co-operative Bank Ltd. (PMC Bank/erstwhile lender) sanctioned mortgage overdraft facility to Corporate Debtor for a sum of Rs. 35 crores and 10 crores, vide Sanction Letters, dated 04.11.2011 and 07.01.2013, respectively.
- The corporate debtor pursuant to the usage of the aforementioned facility, was unable to repay or service the aforementioned overdraft account. Thus, the aforementioned account of the Corporate debtor became Non-Performing Asset.
- In the interregnum, a massive fraud of about 6500 crores was uncovered in September 2019 in relation to the inter se dealings between the officials of PMC Bank and Wadhawan group companies including the Corporate Debtor herein. It was discovered that a massive outstanding of about Rs.6500 crores has been concealed by the accused persons against the HDIL group of companies, causing losses to the depositors of the Bank.
- After the above stated fraud was discovered, PMC Bank was amalgamated into the Applicant herein vide gazette notification, dated 25.01.2022, for recovery of the public monies due from the Corporate Debtor and its group companies, in order to return the monies of the innocent depositors of PMC Bank.
- Since, the Corporate Debtor failed to clear the remaining outstanding, an Application under Section 7 of the IBC was filed on behalf of the PMC Bank before this Hon'ble Tribunal, being CP

(IB) No.1330IMB/2020, seeking initiation of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor, against a default of Rs.103,52,99,8321-. This Hon'ble Tribunal was pleased to allow the aforementioned Application filed under Section 7 of IBC vide Order dated 15.02.2023 according to which CIRP was initiated against the Corporate Debtor.

- The Applicant herein submitted its claim in Form C, dated 03.03.2023, with the IRP, vide email, dated 03.03.2023. The Applicant herein in its claim form clearly demonstrated, with the support of relevant documents, the outstanding amount i.e. Rs 142,10,78,941/- against the Corporate Debtor as on 15.02.2023, as well as the security interest created by the Corporate Debtor in favour of the Applicant.
- The IRP pursuant to receiving claims from the creditors of the Corporate Debtor, published the list of creditors at the website of the Insolvency and Bankruptcy Board of India (IBBI) on 06.03.2023, wherein the entire claim of the Applicant was admitted under the head “Secured Financial Creditor” with voting share of 20.39% in the Committee of Creditors.
- In the 1st meeting of the CoC, the other secured financial creditor namely Omkara Assets Reconstructions Private Limited (‘Omkara'), which is having voting share of 79.61 % in the CoC, proposed replacement, of the IRP and proposed appointment of the Respondent herein as the Resolution Professional. This Hon'ble Tribunal vide Order, dated 31.03.2023, allowed the replacement of IRP with the Respondent herein.
- Pursuant to the replacement of the Resolution Professional, on the request, the Applicant herein once again submitted its Claim Form C, dated 31.05.2023.
- The Respondent thereafter, on 31.05.2023, issued RFRP to the PRAs for submission of Resolution Plan. It is submitted that out of total 9 PRAs, 6 PRAS have submitted their Resolution Plans on

21.07.2023. The copies of the Resolution Plans submitted by the PRAs were shared by the Respondent with the members of the CoC.

- However, after the Applicant herein perused the Resolution Plans submitted by the PRAs, the Applicant was shocked to know that the Applicant herein is being treated as Unsecured Financial Creditor for majority of its claim.
- It is submitted that the Respondent herein on his own accord, in a cryptic and arbitrary manner bifurcated the admitted claim of the Applicant of Rs.142,10,78,941/- into secured claim of Rs.2,53,13,855/- and unsecured claim of Rs.139,57,65,086/-, thereby arbitrarily bifurcating the voting share of the Applicant as 0.36% as Secured Financial Creditor and a voting share of 20.04% as Unsecured Financial Creditor in the CoC. The List of Creditors containing the above stated bifurcation was published on 31.07.2023.
- The Applicant herein after becoming aware of the aforementioned illegal re-classification of the claim, addressed an email, dated 02.08.2023, requesting for reinstating the Applicant herein as the Secured Financial Creditor of the Corporate Debtor for the entire admitted amount in terms of the documents executed between the Corporate Debtor and the Applicant. However, the Respondent without any cogent reason and against the provisions of the IBC, declined the request of the Applicant vide his email, dated 04.08.2023.
- Against the aforementioned arbitrary and cryptic action of the Respondent, the Applicant herein approached this Hon'ble Tribunal with an Application under Section 60(5) of the IBC i.e. being IA No.3592/2023, seeking quashing of the aforementioned decision of the Respondent of reclassification of the claim of the Applicant amongst other reliefs.
- This Hon'ble Tribunal vide Order, dated 08.01.2024, allowed the aforementioned Application of the Applicant. An extract of the above stated Order is reproduced underneath:

"3. Mortgage Overdraft Facility is an account with a discretionary credit limit: a reserve for unplanned purchases and expenditure that one can access quickly. It is backed by security interest which shall mandatorily be registered under Section 77 of the Companies Act, 2013. Pursuant to the same, Form No. CHG-1 is filed by the Corporate Debtor with the Registrar of Companies to register a charge on its assets, and Form No. CHG-2, the certificate is issued by the Registrar of Companies, which evidences the registration of charge on assets of the Corporate Debtor. It is clearly evident that both these documents are filed and obtained by the Corporate Debtor. The RP, on commencement of CIRP, is vested with the management of the Corporate Debtor. Hence the RP in the present case, i.e. ***Sripatham Venkatasubramanian Ramkumar*** *should have already been in possession of these Documents and therefore it was inappropriate on part of the RP, for asking of these Documents from the Applicant who may or may not be in possession of the same. Hence, bifurcating the claim of the Applicant on this ground in our considered opinion is not appropriate. In addition, the RP has also failed to make any submissions with respect to splitting of the claim of the Applicant into secured and unsecured creditor. His duty further extended to justifying the bifurcation of the Applicant's claim on valid grounds and also provide a rationale behind the quantum of such bifurcation.*

*4. Section 3(30) of the Code defines a secured creditor as follows-**"secured creditor" means a creditor in favour of whom security interest is created.** Section 18(b) of the Code and Regulation 13(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 casts a duty on the Resolution Professional to receive, collate and verify the claims of the Creditors of the Corporate Debtor and to rationally bifurcate their claims into secured and unsecured creditors category and to also justify the quantum of such bifurcation.*

5. In light of the above stated facts and circumstances of the present Application and the existing provisions of law, the Resolution Professional is directed to reconsider the claim of the Applicant with due application of mind and taking into account the above stated documents placed on record of this Tribunal.

*6. Hence, in conclusion, the present **I.A. 3592 of 2023** is allowed to the extent of quashing the decision of the RP bifurcating the claim of the Applicant and RP is further directed to reconsider the claim of the Applicant on the strength of documents placed on record at the earliest."*

- Pursuant to Order of this Hon'ble Tribunal, dated 08.01.2024, the Applicant herein addressed an email, dated 10.01.2024, to the Respondent seeking implementation of the aforesaid Order.

Despite the above stated clear and unambiguous directions of this Hon'ble Tribunal in the above stated order, the Respondent now classified the Applicant as Unsecured Financial Creditor for the entire admitted amount. However, the Respondent vide his email dated

30.01.2024, communicated to the Applicant herein that Applicant is treated as unsecured financial creditor for the entire debt amount i.e. Rs 142,10,78,941/-. The Applicant once again challenged the aforementioned decision of the Respondent RP by filing the Application IA No.698/2024 on 08.02.2024.

- It is submitted that prior to listing of IA No.698/2024, before this Hon'ble Tribunal, the Application of the Respondent RP being IA No.4004/2023, filed under Section 30(6) read with Section 31 (1) of IBC seeking approval of the Resolution Plan of Successful Resolution Applicant, dated 08.08.2023, was allowed by this Hon'ble Tribunal on 23.02.2024.
- It is submitted that at the time of pronouncement of aforementioned Order, in IA 4004/2023 dated 23.02.2024, the Applicant herein also prayed before this Hon'ble Tribunal that the final Order in IA No.4004/2023, be kept in abeyance till the IA No.698/2024, is listed and decided by this Hon'ble Tribunal.
- However, this Hon'ble Tribunal was of the view that relief of such a nature cannot be granted till the IA NO.698/2024 is placed before this Hon'ble Tribunal. Therefore, this Hon'ble Tribunal directed for the listing of the IA No.698/2024 on the very next date i.e. 26.02.2024.

4. It is submitted that one of the secured creditor of the Corporate Debtor and even the Operational Creditors of the Corporate Debtor are being paid 68.1 % of their admitted claim amount, whereas the Applicant herein despite being a secured creditor, is only being paid 1.23% of its admitted claimed amount.
5. It is further submitted that the Resolution Plan, envisages distribution of Plan amount to all the creditors within 60 days from the date of approval of the Resolution Plan by this Hon'ble Tribunal i.e. within 60 days from 23.02.2024.
6. Therefore, it is the apprehension of the Applicant that till the time, IA No.698/2024 of the Applicant is adjudicated by this Hon'ble Tribunal,

much water would have passed under the bridge and the reliefs sought by the Applicant in the IA No.698/2024, would become infructuous, in case the distribution of amounts as proposed under the Resolution Plan, dated 08.08.2023, are not stayed by this Hon'ble Tribunal.

7. ***The Applicant vehemently argued that it is a Secured Financial Creditor*** as the mortgage overdraft facilities have been extended by the Applicant against prime security of charge over the book debts of the Corporate Debtor and over immovable properties of the Guarantors and Mortgagor.

7.1 Furthermore, even the Order of this Hon'ble Tribunal in IA 3592 of 2023 supports this contention and categorically holds that the Respondent is wrong in seeking registration of charge under section 77 of the Companies Act, 2013 and therefore the Respondent is incorrect in rejecting the plea of the Applicant of classifying it as an unsecured creditor for non-submission of certificate for registration of charge.

7.2 On mere reading of the Sanction Letter dated 04.11.2011 which was issued in favour of the Corporate Debtor, it is evident that security interest was created in favour of the Applicant. Thus in terms of the provisions of IBC, the Applicant is a secured creditor. The relevant definitions under Section 3 of the Code are produced herein under:

> 3(30) "***secured creditor***" *means a creditor in favour of whom security interest is created;*
>
> *3(31) "**security interest**" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:*

7.3 The Applicant has further placed reliance on the below mentioned judgments so as to substantiate its above stated contention of being a Secured Financial Creditor:

- ***State Tax Officer v. Rainbow Paper Limited (2022 SCC online SC 1162)*** in which the Hon'ble Supreme Court categorized the statutory authority as secured creditor by placing reliance on the wide definition of "Secured Creditor" as defined in Section 3(30) of the Code. An extract of the same is reproduced as under:

  "57... As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) IBC defines "secured creditor" to mean a creditor in favour of whom security interest is created. Such security interest could be created by operation of law. The definition of "secured creditor" in IBC does not exclude any Government or Governmental Authority…."

- ***Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Limited and Ors. (Civil Appeal Nos. 7976 of 2019)*** in which it the Hon'ble Supreme Court had ignored the objection of the Resolution Professional of registration of charge under section 77 of the Companies Act, 2013 in order to classify the creditor as a secured creditor. An extract of the same is reproduced as under:

  "61…The record further shows that after NCLT passed its order, the appellant preferred its claim on 10-04-2018. Based on that application, the liquidator had filed an application before the NCLT for modification of its order dated 21-08-2018, and contended that PVVNL also came under the definition of "Secured Operational Creditor" in realisation of its dues in the liquidation proceedings as per law. The

application sought amendment of the list of stakeholders. The application was allowed. In view of these factual developments, this Court does not consider it appropriate to rule on the submissions of the liquidator vis-à-vis the fact of non-registration of charges under Section 77 of the Companies Act, 2013…."

- ***Reserve Bank of India v. SREI Equipment Finance Limited (IA No. 896/2022 in CP(IB) No. 294/2021)*** wherein the coordinate bench of this Hon'ble Tribunal at Kolkata took into consideration the definition of "financial debt" and "security interest" as provided under Section 5(8) and 3(31) of the Code and held NABARD to be a secured financial creditor due to its security interest on the book debts of the corporate debtor. An extract of the same is reproduced as under:

  "61… In the above conspectus, and upon conjoint reading of Section 5(8) and Section 3(31), which creates a charge on the book debts of the Corporate Debtor, is clearly a Financial debt and since the same has been secured against the book debts of the CD in favour of NABARD, it makes NABARD a Secured Creditor. Having arrived at a decision that NABARD is a secured financial creditor, RP is duty bound to treat it as a secured financial creditor for all intents and purposes of the code…"

8. **The Applicant further alleges that the conduct of the Resolution Professional is completely arbitrary** as despite being aware of the fact that IA 698/2024 was to be listed on 26.02.2024, purportedly circulated an email on 23.02.2024 in late hours of night informing the Applicant and other members about holding the 1st Monitoring Committee meeting on 24.02.2024 (which is a non-working Saturday). The meeting was held with the RP as the Chairman and a resolution

was also passed to open an account for depositing the first tranche of payments to be paid by SRA despite the objections of the Applicant who was also present in the meeting. Additionally, since it was submitted by the Counsel for the RP on 26.02.2024 that the 1st tranche of amounts will be paid on 09.03.2024 therefore the IA 698/2024 was listed on 05.03.2024 for final hearing. However, the first tranche was paid on 26.03.2024 itself by SRA and the said amount has also been duly distributed in terms of the Resolution Plan. Thus this clearly demonstrates that the Respondent had some hidden motive/agenda for intentionally avoiding distribution post the hearing of IA 698/2024 on 26.02.2024.

The mala fide conduct of the Respondent is further substantiated by its submission contending that the non-joinder of Omkara Asset Reconstruction Limited (largest secured financial creditor) culminates into the present Application being non maintainable whereas in fact the decision making process of the RP is independent and cannot be supported or interpreted by the other members of the CoC.

9. It is the further case of the Applicant that **Omkara Assets Reconstruction Company Limited (Intervener)** rights will not be affected by granting interim relief under this Application as what the applicant is interested in is protection of his rights. His rights will be adequately protected by staying disbursement of proportionate share of the Applicant, i.e. to the extent of 20.40% (being the voting share of the Applicant) from the amount of Rs. 379,02,84,000 (being the amount received under the Resolution Plan) which comes approximately to Rs. 77,32,17,936/-. Thus the Intervener is not a necessary party to the present Application.

Submission of the Respondent

1. It is the case of the Respondent that although the Applicant is aware of the claim status/bifurcation since 06.06.2023, I.A. 3592 was filed

only on 12.08.2023 when the Resolution Plans were put to vote by the Committee of Creditors (**Hereinafter referred to as "CoC'**).

2. The erstwhile IRP had also published the list of creditors on 06.03.2023 which explicitly recorded that the claim of the applicant had security interest of only 2.53 crores against a total claim of Rs. 142 crores.
3. The Respondent had also maintained the same position and had informed the same to the Applicant as early as 06.06.2023 and 13.07.2023. The NeSL report generated by the Applicant was not acknowledged by the Corporate Debtor and on 23.01.2020 the Security Interest was shown as only 2.53 crores.
4. The assets basis which the Applicant claims to be a secured creditor does not belong to the Corporate Debtor and it is clear from a basic reading of the Code that a secured creditor is only the one in whose favour the Corporate Debtor has provided its own assets as security/collateral. In order to substantiate its submissions, the Respondent RP relies on the following sections of the Code and their corresponding rationale:

Sr. no.	**Section**	**Corresponding Rationale**
1.	30 (4)	Code provides that the CoC may approve a resolution plan after inter alia considering the manner of distribution as per priority in Section 53
2.	36	Code provides an exhaustive definition of 'Liquidation Estate'. It is clear that as per Section 36 (3) (a)

		Liquidation Estate comprises of assets over which the corporate debtor has ownership rights and includes all rights and interest as evidenced in the balance sheet of the corporate debtor and the information utility registry. In the present case, the asset which the Applicant relies on is an asset of third parties. Thus, as those assets cannot fonn a part of the 'Liquidation Estate' of the Corporate Debtor, the Applicant cannot be held to be 'Secured Creditor' of the Corporate Debtor.
3.	52	As per this, a 'Secured Creditor' is entitled to relinquish its security and enforce it outside the liquidation of a corporate debtor. This would clearly imply that only assets owned by a corporate debtor

		in which a creditor has security interest can be relinquished. If the argument of the Applicant is accepted and in the event of liquidation of the Corporate Debtor, what rights would the Applicant relinquish? Thus, it is clear that 'Secured Creditor' ought to mean a creditor in whose favour the corporate debtor has created security rights.
4.	53	This provides for priority of payment to various types of creditors. The Applicant seeks a higher payout as a Secured Creditor whilst also being entitled to enforce the third party security outside this CIRP process. This cannot be permitted as it is devoid of any logic.

5. The Counsel for the Respondent RP further contended that merely by making a mention of creation of security over book debts of the Corporate Debtor in the Sanction Letter dated 04.11.2011, the Applicant claims to be a secured creditor of the Corporate Debtor. However, this is impermissible as any charge created by a company ought to be recorded by such company with the RoC or if the Company fails to do so, then by such persons in favour of whom a charge has been created as per Sections 77 and 78 of the Companies Act, 2013.
6. The Applicant had attempted to create a charge with the RoC and had registered the charges on CERSAI Portal much after 10 years and after filing I.A. 3592 merely to enjoy false status of a 'Secured Creditor" in Corporate Insolvency Resolution Process without actually having any security of the Corporate Debtor in their favour. This act also disregards applicable moratorium imposed by virtue of Section 14 of the Code.
7. Moreover, the fact that the Applicant filed CHG 1 Form with the ROC on 26.10.2023, much after CIRP was initiated and after IA 3592 was reserved for Order, validates that the Applicant was very well aware that they were not a secured creditor of the Corporate Debtor.
8. The report submitted by the Practicing Company Secretary, on 24.02.2024, engaged by the Respondent, evidently shows no charge is reflected in favour of the Applicant over the assets of the Corporate Debtor.
9. Thus, in view of the above, no Security Interest (as defined in Section 3(31) of the Code) has been legitimately created by the Corporate Debtor in favour of the Applicant and therefore the Applicant is not a Secured Creditor (as defined in Section 3(30) of the Code) of the Corporate Debtor.
10. In response to the contention of the Applicant that the Respondent exercised Adjudicatory Power while classifying its claim, the Respondent submitted that he is aware of the legal position that a Resolution Professional does not have adjudicatory power as held by the Hon'ble Supreme Court in ***Swiss Ribbons Private Limited vs.***

Union of India and Ors. (2019 SCC Onl.ine SC 73). Furthermore, the classification was done only on the strength of the documents and governing resolutions. The CIRP Regulation itself provides that the Respondent ought to specifically verify the security interest of various creditors. In this regard, this Hon'ble Tribunal may note Regulation 13 of the CIRP Regulations as reproduced herein under.

> *The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.*

11. On the other hand, the Respondent has placed reliance on judgements which aid its case with respect to no security interest being created in absence of registration of charge and will thus satisfy this Hon'ble Tribunal. The first case the Respondent relies on is the case of the Hon'ble National Company Law Appellate Tribunal, ***New Delhi in Indiabulls Housing Finance Ltd vs. Kumar Bhattacharya and Another (2019 SCC OnLine NCLAT 1307)***. In this case, the Hon'ble NCLAT has held that:

> *"It is thus clear that the CoC had made it clear that in absence of Charge being registered, the Appellant could not be treated as Secured Financial Creditor. Although the transaction is stated to be of 2012, it is clear that the Charge was not got registered either by the Corporate Debtor or the Appellant till now on 03.10.2019 which is after the Resolution Plan was approved on 04.07.2019. Section 77 of the Companies*

Act, 2013 required the Charge to be registered and the Appellant had an option to resort to even Section 78 of Companies Act, 2013, if there were any grievances. Not having done so, when CIRP started trying to rely on the equitable mortgage without a_ charge created, we do not find there was any error in the CoC meetings which in its wisdom did not recognize creation of security. The transaction did not even reflect in the Books of Account of the Corporate Debtor. Appellant should be happy that it has been at least treated as Financial Creditor. Appellant took no actions since 2012 and till late stage of CIRP. Charge registered after Resolution Plan is approved cannot be considered. "

Further, the Hon'ble Supreme Court on February 10, 2020, in Civil Appeal No. 926 of 2020, has upheld the aforesaid Indiabulls (supra) Judgement of the Hon'ble NCLAT. Thus, the position of law is settled by the Hon'ble Supreme Court that if there is non-registration of charges as per Section 77 of the Companies Act, 2013, one cannot be treated as a Secured Creditor, more so if no steps as per Section 78 of the Companies Act, 2013 have not been taken by such creditor.

12. Furthermore, the Hon'ble NCLAT in the case of ***Volkswagen Finance Private Limited Vs Shree Balaji Printopack Private Limited***, wherein the Hon'ble NCLAT has held that:

"From the documentary evidence on record, it is clear that no 'Charge' has been registered under the provisions of Section 77(1) of the Companies Act, 2013, in relation to the Subject Property. The Liquidator has rightly referred to Regulation 21 of IBBI (Liquidation Process) Regulation, 2016 and observed that the Appellants 'Claim' was not supported by any evidence as

prescribed under the said Regulation. It is also an admitted fact that the 'Charge' was not registered under Central Registry of Securitization Asset Reconstruction and Security Interest of India. We are keeping the ratio of the afore noted Judgements {BP of the Hon'ble Supreme Court and Section 52(3) of the Code read with Regulation 21 (c) of the (Liquidation Process), Regulations, 2016, in view. We are of the considered opinion that the contentions of the Learned Counsel appearing for the Appellant that Registration with Motor Vehicle Authority under Section 51 of the Motor Vehicles Act, 1988 would suffice, cannot be sustained. Section 51 (1) of the MV Act, 1988 only provides for "entry" in the Certificate of Registration regarding the agreement. The Section provides how to deal with the entry. To reiterate, in the instant case, as the 'Security Interest' was neither registered with the 'Information Utility'; nor under Section 125 of the Companies Act, 1956/Section 77 of the Companies Act, 2013; no Application was preferred under Section 87 of the Companies Act, 2013; 'Charge' was not registered in the Securitisation Asset Reconstruction and Security Interest of India, we are of the opinion that Section 52(3) (b) of the Code and Regulation 21 (b) of the (Liquidation Process), Regulation, 2016 are not complied with and the ratio laid down by the Hon'ble Apex Court in Kerala State Financial Enterprises Ltd. (Supra) and this Tribunal in India Bulls Finance Ltd. (Supra) is

squarely applicable to the facts of this case. Hence, we hold that when in present matter 'Charge' was not registered as per the provisions of Section 77(1) of the Companies Act, 2013 and as envisaged under the Code, the Creditor cannot be treated as a 'Secured Creditor'.

13. Thus, the Respondent's decision to hold the Applicant as an unsecured creditor is substantiated by case laws.

14. Furthermore, the Resolution Plan for the Corporate Debtor already stands approved and is being implemented by the Successful Resolution Applicant. Further, claims cannot be modified once Resolution Plan once approved as it will be against the settled principles of clean slate theory.

15. Thus, from the above, it is evident that the captioned Application deserves to be dismissed with exemplary costs of the Applicant.

Submissions of Omkara Assets Reconstruction Company Limited (Intervener)

1. It is the first and foremost submission of the Intervener that based on the mala fide conduct of the Applicant of not making the Intervener a party, though it was necessary, the captioned Application ought to be *ipso facto* dismissed on this sole ground of non-impleadment of necessary party.
2. The Intervener claims to be a necessary party as staying the distribution of amounts under the Resolution Plan would heavily prejudice the Intervener on account of non-receipt of funds under the Plan. The Intervener further claims that only the Resolution Professional is made a party to the Application who is a functus officio as neither he is a part of the Monitoring Committee nor entitled to any funds under the Plan.

2.1. The Intervener relies on the judgement of the Hon'ble Supreme Court in ***J.S. Yadav v. State Of Uttar Pradesh and Anr. (2011) 6 SCC 570*** wherein it was held as follows:

" 3.1….No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice…."

3. The Applicant had been participating in the CIRP process being largely an unsecured financial creditor from 31.07.2023 and attending CoC meetings and only towards its fag end started raising baseless allegations and IA's before this Hon'ble Tribunal, thereby further indulging in mala fide conduct. Therefore, no harm will be caused to the Applicant if the interim relief is not granted.

Order

1. The instant Application is filed by the Applicant under Section 60(5) of the Code r/w Rule 11 of National Company Law Tribunal Rules, 2016 (NCLT Rules) seeking stay on the distribution of amounts under the Resolution Plan, dated 08.08.2023 (as amended), submitted by Successful Resolution Applicant and approved by this Hon'ble Tribunal vide Order, dated 23.02.2024, till the Application filed by the Applicant i.e. IA No.698/2024 (filed on 09.02.2024) against classification of the Applicant as unsecured financial creditor, is finally adjudicated by this Hon'ble Tribunal.

The Applicant had submitted its claim in Form C to the Resolution Professional on 31.05.2023. Thereafter, on 31.07.2023 the Resolution Professional bifurcated the claim of the Applicant into Unsecured Financial Creditor to an amount of Rs. Rs.139,57,65,086/ and Secured Financial Creditor to an amount of Rs. Rs.2,53,13,855/-. Aggrieved by the above stated decision of Resolution Professional, the

Applicant filed IA No. 3592/2023 seeking quashing of the aforementioned decision of the Respondent of reclassification of the claim of the Applicant amongst other reliefs. As per Order dated 08.01.2024 of this Hon'ble Tribunal, the Resolution Professional was directed by this Hon'ble Tribunal to reconsider his decision of segregating the claim of the Applicant into the two heads, i.e. Unsecured Financial Creditor and Secured Financial Creditor. Thereafter, the Applicant claims that the Resolution Professional/Respondent on 30.01.2024 reclassified the entire claim of the Applicant as Unsecured Financial Creditor.

The Applicant vide IA No.698/2024, seeks the quashing of the decision of the Resolution Professional/Respondent, dated 30.01.2024, wherein the Respondent has arbitrarily and illegally reclassified the entire claim of the Applicant from secured financial claim to unsecured financial claim. Further, due to the aforementioned cryptic action of the Respondent, the Applicant herein despite having an admitted claim of Rs.142,10,78,941/-- and voting share of 20.39% in the Committee of Creditors, is receiving only an amount of Rs. 1.72 Crores under the Resolution Plan, whereas on the other hand, the other financial creditor (Omkara Asset Reconstruction Pvt. Ltd.) whose admitted claim amount is Rs.556.95 crores, is being paid an amount of Rs.379 Crores under the Resolution Plan. Thus, the instant Application is being filed seeking stay of distribution under the plan as the reliefs sought in IA No.698/2024 against classification of the Applicant as Unsecured Financial Creditor, would become infructuous in case the implementation of the Resolution Plan is not stayed till the final disposal of IA No.698/2024. Additionally, since it was submitted by the Counsel for the RP on 26.02.2024 that the 1st tranche of amounts will be paid on 09.03.2024 therefore the IA was listed on 05.03.2024 for final hearing. However, the first tranche was received on 26.02.2024 itself from SRA and the said amount has also been duly distributed in terms of the Resolution Plan. The Applicant vehemently

made an attempt to justify how it is rightly a secured financial creditor and how the Resolution Professional was acting with a mala fide intention all throughout the course of events. The Applicant further submitted that Omkara Asset Reconstruction Pvt. Ltd. is not a necessary party to the captioned Application as his rights will be adequately protected by staying disbursement of proportionate share of the Applicant, i.e. to the extent of 20.40% (being the voting share of the Applicant) from the amount of Rs. 379,02,84,000 (being the amount received under the Resolution Plan) which comes approximately to Rs. 77,32,17,936/-.

2. On the other hand, the contention of the Respondent is that the decision of the Respondent classifying the admitted claim of the Applicant of Rs.142,10,78,941/- into unsecured claim is primarily because of non-registration of charges under sections 77 and 78 of the Companies Act, 2013. Additionally, the assets on the strength of which the Applicant claims to be a secured creditor does not belong to the Corporate Debtor and it is clear from a basic reading of the Code that a secured creditor is only the one in whose favour the Corporate Debtor has provided its own assets as security/collateral. Furthermore, in the instant case, the Resolution Plan has already been approved by this Hon'ble Tribunal on 23.02.2024. The Intervener claimed to be a necessary party as staying the distribution of amounts under the Resolution Plan would heavily prejudice the Intervener on account of non-receipt of funds under the Plan.

3. After close perusal of the documents placed on record by both parties and appreciating their submissions, it is clearly evident that the present Application is mainly filed seeking relief for the stay of distribution of amounts by SNJ Breweries Private Limited (Successful Resolution Applicant) as proposed under the Resolution Plan dated 08.08.2023, whereas IA 698/2024 is the Application challenging the decision of the Respondent classifying the entire admitted claim of the Applicant of Rs.142,10,78,941/- under the head of *"Unsecured Financial Creditor".*

4. We categorically appreciate the contentions of the Applicant that in view of the fact that adjudication upon the issue whether the Applicant is a Secured Financial Creditor or not, is still pending, the stay of distribution up to extent of voting share of the Applicant is justifiable. More so when it is a Public Sector Bank. This will not cause any prejudice to any other stakeholder. We also take into account the pertinent fact that the 1st tranche of payment was made on 26.02.2024 even though the deadline for the same was 09.03.2024 and IA 698/2024 was listed for final hearing on 05.03.2024.

5. This Tribunal, however, limits itself to the issue relating to stay on the distribution of amount under the Resolution Plan dated 08.08.2023 as that is what is specifically prayed for in the captioned Application. The Resolution Plan in the present case was approved by the Order of this Hon'ble Tribunal dated 23.02.2024. In the above stated order itself, this Hon'ble Tribunal had directed the Respondent to file status of the Implementation of the Resolution Plan submitted by the Successful Resolution Applicant- SNJ Breweries Pvt. Ltd. The said direction in the order was complied with by the Respondent through filing IA No. 3002 of 2024 on 27.05.2024. An extract of IA No. 3002 of 2024 is reproduced here in under:

"20. It is pertinent to note that, as per the Approved Resolution Plan and as resolved in both the meetings of Monitoring Committee, the payments of all the 4 tranches have been distributed to the stakeholders, the management and control of the Corporate Debtor has been handed over to the Resolution Applicant and the implementation of the Approved Resolution Plan has been completed. Details regarding the payments of all the four tranches is set out below.

Sr. No	***Particulars***	***Due Date as per Approved Resolution Plan***	***Date on which Amount was infused by SRA***	***Amount paid to Stakeholders***	***Date on which Amount was distributed to Stakeholders***
1	*Payments for Tranche I.*	*March 9, 2024*	*Feb 26, 2024*	*Rs. 41,92,68,565/-*	*Feb 26, 2024*
2	*Payments for Tranche 2.*	*March 24, 2024*	*March 19, 2024*	*Rs. 75,85,96,800/-*	*March 19, 2024*
3	*Payments for Tranche 3.*	*April 8, 2024*	*March 26, 2024*	*Rs. 75,85,96,800/-*	*March 26, 2024*
4	*Payments for Tranche 4.*	*April 23, 2024*	*April 23, 2024*	*Rs. 172,64,92,200/-*	*April 18, 2024 & balance on May 4, 2024*
				Total Amount Paid- Rs. 383,29,54,165/-	

6. In view of the fact that the Resolution Plan already stands implemented in entirety, the prayer in the present IA No. 796/2024 has become infructuous. Hence, in view of the fact that the prayer has become infructuous the present Application is being disposed off.

SD/-
MADHU SINHA
MEMBER (TECHNICAL)

SD/-
REETA KOHLI
MEMBER (JUDICIAL)

//VLM//