

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT-III

I.A No. 4943/2025

In

CP No. 1852 /2019

*Under Section 60(5)(c) of the Insolvency and
Bankruptcy Code, 2016.*

**The Vishweshwar Sahakari Bank
Limited, Pune**

471/472, Market Yard, Gultekdi, Pune,
Maharashtra - 411037

... Applicant

Vs

Prashant Jain

*Liquidator of M/s Pratibha Krushi Prakriya
Limited*

A 501, Shanti Heights, Plot No. 2, 3, 9B/10,
Section 11, Koparkharine, Thane, Navi
Mumbai – 400709

... Respondent

In the matter of

American Express Banking Corp

... Financial Creditor

Vs

Pratibha Krushi Prakriya Limited

Office No. 110, West Wing, Aurora Towers,
Camp, Pune 411001

CIN: U15490PN2010PLC137868

... Corporate Debtor

*[Under Section 7 of the Insolvency and
Bankruptcy Code, 2016]*

Order pronounced on: 10.06.2026

Coram:

Ms. Lakshmi Gurung, Member (Judicial)

Sh. Hariharan Neelakanta Iyer, Member (Technical)

Appearances:

For the Applicant : Adv. Avinash R. Khanolkar a/w Adv. Khushbu Bhanushali & Adv. Surekha Yadav

For Respondents : Adv. Mily Ghoshal a/w Adv. Shweta Thanekar

Per: Ms. Lakshmi Gurung, Member (Judicial)

1. The Interlocutory Application (IA) bearing no. 4943/2025 has been filed by the Vishweshwar Sahakari Bank Limited, Pune (**'Applicant'**), a secured creditor of M/s Pratibha Krushi Prakriya Limited (**'Corporate Debtor'**) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) seeking following reliefs:
 - a) *Allow the Application*
 - b) *Pass an Order permitting the Applicant viz. The Vishweshwar Sahakari Bank Limited, Pune to realise its Security Interest over the property situated at Industrial Plot at Gat No. 319, Mauje Pilanwadi, Tal. Daund, Pune, Maharashtra – 412207 for an area of 45,715 Sq. Meter of M/s. Pratibha Krushi Prakriya Limited in terms of S.52 (1)(b) of the Insolvency and Bankruptcy Code, 2016*
 - c) *In alternative to Relief as being sought vide clause 68 (b) herein-above; to pass an Order directing the Respondent viz. Shri Prashant Jain, Liquidator for Ms. Pratibha Krushi Prakriya Limited to permit the Applicant viz. The Vishweshwar Sahakari Bank Limited, Pune to realise its Security Interest over the property situated at Industrial Plot at Gat No. 319, Mauje Pilanwadi, Tal. Daund, Pune, Maharashtra – 412 207 for an area of 45,715 Sq. Meter of M/s. Pratibha Krushi Prakriya Limited in terms of S. 52 (1) (b) of the Insolvency and Bankruptcy Code, 2016;*
 - d) *Pass any other order in the interest of justice, equity and good conscience.*

2. **Factual Matrix:**

- 2.1 Upon an application filed by American Express Banking Corp under section 7 of the Code, Corporate Insolvency Resolution Process (**CIRP**) of Partibha Krushi Prakriya Limited (**Corporate Debtor**) commenced vide order dated 02.08.2019.
- 2.2 In absence of any resolution plan approved by the CoC, RP filed IA/1984/2021 (**Liquidation IA**) on 18.08.2021 under section 33(2) of the Code seeking liquidation of the Corporate Debtor. IA bearing no. 1899/2021 was also moved by an ex-director of the Corporate Debtor seeking permission to submit a resolution plan.
- 2.3 The Adjudicating Authority vide two separate orders, both dated 02.02.2023, rejected the IA/1899/2021 filed by the ex-director and allowed the Liquidation IA. Accordingly, liquidation process was commenced against the Corporate Debtor and Mr. Jitendra Jain was appointed as the Liquidator.
- 2.4 The Public Notice for inviting claims from the stakeholders of the Corporate Debtor was issued on 08.02.2023.
- 2.5 Meanwhile, the orders dated 02.02.2023 were assailed before the Hon'ble National Company Law Appellate Tribunal (NCLAT) by two separate appeals no. Company Appeal (AT) (Ins) No. 190/2023 and Company Appeal (AT) (Ins) No. 219/2023 respectively. The Hon'ble NCLAT vide order dated 23.02.2023, imposed a stay over the operation of the liquidation order. Both the appeals were dismissed by Hon'ble NCLAT vide a common order dated 12.12.2023 and the stay was vacated.
- 2.6 During the interregnum period, on 27.10.2023, the Liquidator communicated his intention to resign. Thus, after dismissal of appeal and lifting of the stay by order dated 12.12.2023, the liquidation process could not resume due to the vacation of the office of the Liquidator.

- 2.7 Bank of India, one of the members of SCC, addressed an email dated 19.07.2024, to the erstwhile Liquidator *inter alia* asking to convene the meeting of the SCC.
- 2.8 Thereafter, a Joint Lenders' Meeting (JLM) was held on 02.08.2024 wherein Mr. Prashant Jain (**Respondent**) was nominated to be appointed as the Liquidator of the Corporate Debtor. Accordingly, Bank of India filed IA No. 5750/2024 seeking appointment of the Respondent as the Liquidator which was allowed vide order dated 09.04.2025 and the Respondent was appointed as the Liquidator of the Corporate Debtor.
- 2.9 The Applicant, Vishweshwar Sahakari Bank Limited, Pune, submitted its claim on 19.05.2025. The Liquidator vide email dated 19.07.2025 sought queries in respect of the claim. In response, the Applicant addressed letter dated 12.08.2025. The Liquidator through email dated 11.09.2025 rejected the claim of the Applicant.
- 2.10 The Applicant addressed letter dated 20.09.2025 seeking clarification as to whether the Liquidator has rejected the claim in its entirety or only the application made for realizing the security interest in terms of section 52 of the Code. The Liquidator reverted vide email dated 03.10.2025 and clarified that only the application for realizing the security interest has been rejected and the claim of the Applicant has been admitted.
- 2.11 The present application has been filed by the Applicant on 16.10.2025 challenging the decision of the Liquidator of rejecting the application made by Applicant for realizing its security interest in terms of section 52 of the Code.

3. **Submission of the Applicant**

- 3.1 It is submitted that section 52 of the Code requires the secured creditor only to inform the decision of either relinquishing or realizing the

security interest and once the secured creditor opts for realizing the security interest, the Liquidator has to permit the same after verifying the security interest. It is submitted that there is no provision in the Code or applicable regulations which permits the Liquidator to deny the right of a secured creditor to realise its security interest.

- 3.2 It is contended that the Liquidator's interpretation of Regulations 21A and 37 of the Liquidation Regulations is factually incorrect.
- 3.3 With respect to the applicability of Regulation 21A, it is submitted that as per Regulation 21A, the secured creditor was required to communicate its decision of relinquishing or realizing its security interest within 30 days from the liquidation commencement date. In the present case, the operation of the liquidation order dated 02.02.2023 was stayed by Hon'ble NCLAT on 23.02.2023. Thus, the liquidation order was in operation only for 20 days. The stay was vacated on 12.12.2023, however, in the meantime, the erstwhile Liquidator resigned and as a result, the office of Liquidator was vacant with effect from 27.10.2023 till 09.04.2025 when the Respondent was appointed as the Liquidator.
- 3.4 It is submitted that the liquidation was resumed on 09.04.2025 and there was a period of 10 days left for the Applicant. It is submitted that the said 10 days started only from 02.05.2025 as the Applicant became aware of the appointment of the Respondent as the Liquidator of the Corporate Debtor only on 02.05.2025 when the Applicant was served with the notice of the 2nd SCC Meeting. The Applicant submitted its claim on 19.05.2025. There being a delay of 7 days, the Applicant is seeking condonation of delay.
- 3.5 As far as Regulation 37 is concerned, it is submitted that Regulation 37 provides that the Secured Creditor shall intimate the price at which he proposes to realise the Security Interest whereas in the present case, the Liquidator has not even permitted the Applicant to realise the

security interest and therefore, the provisions of Regulation 37 of the Liquidation Regulations would not come into picture.

- 3.6 Further, as per sub-regulation 7 of Regulation 37, the provisions of Regulation 37 would not apply to a secured creditor who is realizing its security interest in terms of the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Recovery of Debts and Bankruptcy Act, 1993.
- 3.7 Without prejudice, it is submitted that the provisions of section 52 of the Code does not envisage that applicability of section 52 of the Code is subject to compliance of Regulations 21A and/or 37 of the Liquidation Regulations and that any secured creditor who is not complying with the said regulations is not entitled to the right provided under section 52 of the Code.

Reply of Liquidator

4. The Liquidator has filed his reply dated 10.11.2025 with following submissions:
- i. The Applicant had initiated arbitration against the Corporate Debtor under the Maharashtra Co-operative Societies Act, 2002 around the year 2020 when the Corporate Debtor was already undergoing CIRP. The arbitration proceedings continued and an award against the Corporate Debtor was passed on 10.11.2022 holding that the Corporate Debtor is jointly and severally responsible for the default. It is submitted that the Ld. Arbitrator in the Award dated 10.11.2022 has also mentioned about the CIRP of the Corporate Debtor. It is submitted that the award dated 10.11.2022 is in breach of moratorium under section 14 of the Code.
 - ii. It is submitted that Regulation 37 of the Liquidation Regulations provides that a secured creditor who seeks to realize its security interest under section 52 shall intimate the Liquidator of the price at which he proposes to realize its secured assets, however, the

Applicant has not intimated any such price to the Liquidator. As far as the contention of Applicant with respect to non-applicability of the said regulation on the ground of SARFAESI or DRT proceedings, it is submitted that no notice as been issued by the Applicant against the Corporate Debtor under SARFAESI Act.

- iii. It is submitted that as per Regulation 31A of the Liquidation Regulations, a secured creditor who has relinquished its security interest shall not be a part of the consultation committee. In the present case, the Applicant being an active participant in the SCC of the Corporate Debtor, is deemed to have waived its right under section 52 of the Code.
- iv. It is submitted that the Applicant is attempting to shift the liquidation commencement date from 02.02.2023 to 09.04.2025. It is submitted that the liquidation was already resumed with the dismissal of the Appeal vide order dated 12.12.2023 and the Applicant herein was required to take sufficient steps.
- v. With respect to the delay in filing the claim, it is submitted that the Applicant had himself filed application somewhere in the month of January. The said application was disposed of by a common order dated 09.04.2025 along with the IA filed by Bank of India for appointment of Liquidator. Further, the Applicant was also a part of the CoC and therefore, the Applicant cannot plead ignorance of the proceedings. Thus, there has been non-compliance of Regulation 21A which provides for exercise of right by a secured creditor under section 5 within 30 days from the liquidation commencement date. It is submitted that despite belatedly exercising its right under section 52, the Applicant has not sought condonation of delay in the prayers.

Rejoinder by the Applicant

5. The Applicant has filed Rejoinder dated 14.11.2025 with following submissions:

- i. It is submitted that the arbitral award dated 10.11.2022 has been referred in the claim filed by the Applicant either during CIRP or liquidation of the Corporate Debtor only to substantiate the default and the claim was not based on the arbitral award. It is an admitted position that the Corporate Debtor has provided a collateral security of its asset with the Corporate Debtor to secure the credit facilities sanctioned to M/s Vimal Doodh Private Limited by the Applicant and further created a mortgage of security interest in favour of the Applicant through a registered Mortgage Deed dated 05.03.2019. A charge in favour of the Applicant is also registered with the Registrar of Companies (ROC), Pune by the Corporate Debtor.
- ii. It is submitted that till the filing of reply, neither the RP nor the Liquidator has raised the issue of arbitration award and in fact, the Liquidator has admitted the claim of the Applicant. Only the application for realisation of security interest was rejected by the Liquidation. Thus, the Liquidator is now estopped from challenging the arbitration award.
- iii. With respect to the liquidation commencement date, it is submitted that the Applicant is not seeking to change the liquidation commencement date. It is submitted that due to vacancy in the office of liquidator till 09.04.2025, no occasion arose for the Applicant to file a claim.
- iv. With respect to contention of liquidator that the Applicant was aware about appointment of liquidator, it is submitted that the Applicant has not mentioned in the application that it is not aware about the appointment of the liquidator. It is submitted that appointment and taking charge are two distinct things and unless the appointed person takes charge of the appointed post, such post shall be considered vacant only.

- v. With respect to no prayer on condonation of delay, it is submitted that the Applicant in paragraphs 57 and 68(a) of the application has sought a condonation of delay.
- vi. With respect to the Liquidator's submission that there is deemed relinquishment of security interest by participation in the SCC Meetings, it is submitted that the Liquidator herein has not constituted any Stakeholders' Consultation Committee (SCC) for the Corporate Debtor till date and the SCC meetings are being convened in pursuance to the provisions of Regulation 31A (1A) of the Liquidation Regulations. This fact is evident from the Minutes of 2nd & 3rd SCC meetings and therefore, participation of the Applicant in the SCC, which is convened in terms of Reg. 31A (1A), cannot be stretched to imagine that the Applicant has relinquished its Security Interest.
- vii. It is submitted that the Liquidator has not prepared a Liquidation Estate and has also not filed a Preliminary Report and Asset memorandum as required under the Liquidation Regulations. Since the Liquidation Estate is not formed, there is not question of security interest forming a part of liquidation estate.

DISCUSSION & FINDING

- 6. Heard Ld. Counsel for the parties and perused the record.
- 7. The Corporate Debtor was admitted to CIRP vide order dated 02.08.2019. The Applicant herein is a secured creditor of the Corporate Debtor and was a part of the Committee of Creditors (CoC).
- 8. In absence of any approved resolution plan, the liquidation process of the Corporate Debtor commenced vide order dated 02.02.2023 and Mr. Jitendra Jain was appointed as the Liquidator (**Erstwhile Liquidator**). The erstwhile Liquidator made public announcement inviting claims was made on 08.02.2023.

9. The suspended director of the Corporate Debtor challenged the liquidation order and the Hon'ble NCLAT had imposed a stay on the operation of the liquidation order on 23.02.2023. During the stay period, on 27.10.2023, the erstwhile Liquidator submitted his resignation as a result of which the office of Liquidator became vacant.
10. The Hon'ble NCLAT dismissed the appeal vide order dated 12.12.2023 and the stay was vacated. However, despite the resumption of the liquidation of the Corporate Debtor with effect from 12.12.2023, there was no progress in the liquidation process due to the absence of the Liquidator.
11. It was only on 09.04.2025 that the Respondent herein was appointed as the Liquidator of the Corporate Debtor.
12. The Applicant submitted its claim on 19.05.2025 and also applied for realisation of its security interest. The Liquidator vide his communication dated 11.09.2025 and 03.10.2025 admitted the claim of the Applicant but rejected the application for realisation of the security interest.
13. The emails dated 11.09.2025 and 03.10.2025 are reproduced below:

Email dated 11.09.2025

“The Hon'ble National Company Law Tribunal vide its order dated 09/04/2025 in I.A. No. 621/2025 filed by your client has directed the liquidator to consider the claim (& verification of security for electing not to relinquish the same) in accordance with the law. In pursuance of the same, the undersigned has decided to reject the claim of your client based on the following grounds.

A. Non-Compliance of Regulation 37 of the IBBI (Liquidation Process) Regulation, 2016.

Your client has sought to exercise its right under Section 52(1)(b) of the Insolvency and Bankruptcy Code, 2016 (“the Code”) to realise its security interest independently. Regulation 37(1) of the Liquidation Regulations mandates that a secured creditor opting to realise its

security interest is required to intimate to the liquidator the price at which it proposes to realise the secured asset. This intimation is not a mere procedural formality but a statutory requirement, the non-compliance of which vitiates the exercise of such election.

B. Non-Compliance of Regulation 21(A) of the IBBI (Liquidation Process) Regulation, 2016.

...

no relief for seeking condonation of delay in intimating the said request was sought and or granted. Since the condonation of such delay in the present matter is beyond the power of the Liquidator, the Liquidator is unable to consider your client's request as sought to exercise the right under section 52.”

Email dated 03.10.2025

...

Your client's claim to the extent of Rs. 5,80,72,778.48, collated during CIRP, stands admitted. The balance claim amount is rejected as it was not submitted within the prescribed timeline. Moreover, as no relief for condonation of delay was either sought or granted, and since such condonation is beyond the powers of the Liquidator, the undersigned is unable to consider your client's request for exercising rights under Section 52 of the Code.

3. Conclusion

Thus, we wish to clarify that your Client's claim has not been entirely rejected. The claim submitted by your Client during the CIRP has been duly carried forward by the undersigned.

14. We note that the liquidator has rejected the request of the applicant for realising its security interest while the claim amount of the Applicant is admitted by the liquidator. The main reasons given by liquidator are:
 - i. Non-compliance of Regulation 37 of the Liquidation Regulations
 - ii. Non-compliance of Regulation 21A of the Liquidation Regulations

15. The Applicant has filed the present application seeking permission to realise its security interest.

16. When the matter was heard on 18.11.2025, this Tribunal passed the following order:

“6. Having considered the arguments advanced by Ld. counsel on both sides, we are of the opinion that in the absence of the Liquidator for a considerable time due to stay by Hon’ble NCLAT and resignation of the Liquidator we would like to examine the provisions of section 52(3) of the Code read with presumption under Regulation 21A of the IBBI Liquidation Regulations, to ascertain the correct position.

7. This Tribunal therefore, directs that the Liquidator shall not conduct the sale of the asset over which the applicant has security interest till the disposal of this IA.”

17. The submissions pressed on behalf of the Applicant are:

- a) As per of sub-section (3) of section 52 of the Code, the Secured Creditor has to seek prior permission of the Liquidator before realisation of security interest and only after the liquidator permits, the Secured Creditor can realise security interest. In the present case, the liquidation period commenced on 02.02.2023 and continued for 20 days till the Hon’ble NCLAT stayed the liquidation order on 23.02.2023. The stay was vacated on 12.12.2023 with dismissal of the appeal. In strict sense, the liquidation period resumed on 12.12.2023. However, since the earlier Liquidator has resigned as liquidator with effect from 27.10.2023, the office of the liquidator was vacant w.e.f. 27.10.2023 till 09.04.2025 and the liquidation period was in limbo. In the absence of any liquidator, it is submitted that the applicant could not comply with the requirement of section 52(3) i.e. seeking permission from the Liquidator. After the appointment of the new

liquidator, when the applicant filed its claims and sought permission to realise security interest, the liquidator has rejected the same.

- b) It is submitted that after the liquidation period resumed on 09.04.2024, there was a period of 10 days left under Regulation 21A of the Liquidation Regulations, however, the Applicant became aware of the taking charge of the new liquidator only on 02.05.2025 when the applicant was served the notice of 2nd SCC meeting. Thereafter, the applicant submitted its claims on 19.05.2025 and sought permission for realisation of security interest, with a delay of 7 days and seeks condonation of such delay by this Tribunal.
- c) It is submitted that the Liquidator's rejection of permission on the ground of Regulation 37 of the Liquidation Regulations is misconceived for the reason that since the Liquidator has not permitted the applicant to realise the security interest, the question of intimating the proposed price at which the applicant proposed to realise the security interest does not come into play. Further, as per Regulation 37(7), the provisions of Regulation 37 are not applicable if the secured creditor is realising its security interest in terms of SARFEASI Act.
- d) Lastly, it is submitted that applicability of Section 52 of the Code is not subject to the compliance of Regulation 21A or Regulation 37 of the Liquidation Regulations.

18. The counter arguments on behalf of the Liquidator are as follows:

- a) The Liquidation process of the Corporate Debtor had effectively resumed from 12.12.2023 with the dismissal of the appeal, however, the Applicant by stating that the liquidation process has resumed only from 09.04.2025 is attempting to shift the liquidation commencement date.
- b) The Applicant has submitted its claim after the prescribed time under Regulation 21A of the Liquidation regulations. It is submitted that

Regulation 21A categorically mentions that any failure to express its interest within 30 days shall lead to a presumption that the said asset will be a part of the liquidation estate. Reliance is placed on ***State Bank of India vs. Shymal Kumar Bhattacharjee, Liquidator of Purple Advertising Services P. Ltd & Anr (2023 SCC Online NCLT 18397)*** wherein it was held that compliance of regulation 21A is mandatory and not directory.

- c) It is further submitted that Regulation 37 provides that a secured creditor who seeks to realize its security interest under section 52 shall intimate the Liquidator of the price at which he proposes to realize its secured assets, however, the Applicant has not intimated any such price to the Liquidator. In fact, the Applicant has stated that Regulation 37 is not applicable in the present case by virtue of sub-regulation (7) therein. However, there is no notice being issued by the Applicant against the Corporate Debtor enforcing or attempting to enforce SARFAESI proceedings against the Corporate Debtor.
- d) As per Regulation 31A of the Code, a Secured Creditor who has not relinquished his security interest under section 52 shall not be a part of the consultation committee, whereas in the present case the Applicant has duly participated in the 2nd and 3rd SCC meetings and therefore, has deemed to have relinquished its security interest.
19. Considering the submission of the parties and the documents placed on record, the issue before this Tribunal is whether in the given facts and circumstances, the Applicant could assert its right to realise its security interest?
20. To decide the aforesaid issue, the following provisions need to be examined:
- i. Section 52 of the Code
 - ii. Regulation 21A of the Liquidation Regulations
 - iii. Regulation 37 of the Liquidation Regulations

21. Section 52 of the Code is reproduced below:

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 subsection (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.

22. It is submitted on behalf of the Applicant that under section 52(3) of the Code, the Liquidator was required to verify the security interest and permit the Applicant for realisation and until then, the Applicant cannot realise its security interest.

23. We have examined the provisions of Section 52 of the Code. Nowhere does it envisage that the Secured Creditor shall seek permission of the liquidator before intimating its decision to realise the security interest. Section 52(2) clearly indicates that where the secured creditor intends to realise its security interest, it shall inform the liquidator of such security interest and identify the asset which is under such security interest. Thus, the secured creditor has to merely intimate its decision to the liquidator to realise the security interest pursuant to which the Liquidator

has to verify and permit the secured creditor to realise only such security interest which has been duly verified.

24. In the matter of ***HDFC Bank Ltd. vs. M/s Hema Engineering Industries Limited [Company Appeal (AT) (Ins) No. 346 of 2025]***, the Hon'ble NCLAT has observed that it is the reciprocal duty of the Liquidator under section 52(3) of the Code to verify and permit realisation of the security interest which clearly indicates that the duty of liquidator under section 52(3) would come into effect as a response to the intimation by the secured creditor under section 52(2) of the Code. The relevant observations are extracted below:

“25. Perusal of Section 52 of the IBC would reveal that reciprocal duties and obligations have been casted on Secured Creditor as well as on liquidator. Under Section 52 (2) of the Code a duty is cast on the secured creditor to inform the liquidator about his intention to realize the security interest in a property and also to identify, verify those assets/properties which may be subject to realisation of such security interest. Simultaneously, sub-Section 3 of this Section cast a reciprocal duty on the liquidator to verify such security interest and thereafter permit the secured creditor to realize only such security interest, existence of which has been proved to the satisfaction of the liquidator.

26. Thus, permission of liquidator, permitting secured creditor to realize his security interest after due verification of the assets appears to be a condition precedent and without such permission a secured creditor may not be in a position to realize the secured interest in that asset.”

25. Thus, the provision of section 52(3) of the Code would come into play only after a secured creditor intimates its decision of realising its security interest to the Liquidator under section 52(2) of the Code.
26. The time period for the purpose of section 52(2) of the Code is given in Regulation 21A of the Liquidation Regulations. Regulation 21A which was inserted by Notification No. IBBI/2019-20/GN/REG047 dated 25.07.2019 (w.e.f. 25.07.2019) is reproduced below:

Presumption of security interest. –

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

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

27. According to Regulation 21A, the Secured creditor **shall** inform the liquidator its decision to realise the security interest. There is a proviso that if a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest **shall** be presumed to be part of liquidation estate.
28. The word “shall” used in Regulation 21A together with the consequences provided for non-compliance of the provisions clearly indicate that the intimation by secured creditor of its decision to realise or relinquish its secured interest within a period of 30 days from the liquidation commencement date is mandatory.
29. In the matter of **Small Industries Development Bank of India (SIDBI) vs. Shri Vijender Sharma [Company Appeal (AT) (Ins) No. 1027 of 2021]**, the Hon’ble NCLAT has observed:
- “21. It thus becomes quite clear that compliance of regulations 2(ea), 2-A, 21-A and 37 of the Liquidation Process Regulations and Section 52/ 53 of the IBC are absolutely necessary even if the secured creditor proceeds to realise its security interest.”*
30. Further, in **Dhanlaxmi Bank Ltd. vs. Techno Fac Manufacturing Ltd. & Ors. [Company Appeal (AT) (Ins) No. 777 of 2021]**, after observing that the secured creditor has failed to realise its security interest within the time period prescribed under Regulation 21A (2) of the Liquidation Regulations, the Hon’ble NCLAT upheld the order of Ld. NCLT directing the secured creditor to handover the asset back to the Liquidator.

31. The above judicial precedents set the principle that the secured creditor is duty bound to realise its security interest in a time bound manner and that the period prescribed under Regulation 21A have to be construed to be mandatory in nature.
32. The head note of Regulation 21A is 'presumption of security interest'. As per the proviso contained therein, non-intimation of the decision of the secured creditor shall give rise to a presumption. Presumption under the law is always rebuttable. If the applicant is able to demonstrate that it has realised the security interest or has taken effective steps to realise the security interest within the prescribed time limit then such presumption may be rebutted by the action of the secured creditor.
33. In the present case, the liquidation of the Corporate Debtor commenced on 02.02.2023. Thus, the 30-day time period under Regulation 21A had begun to run from 02.02.2023. However, due to stay imposed by Hon'ble NCLAT on 23.02.2023, the same was interdicted. Thus, the liquidation period was active only for 20 days before the stay.
34. Ld. Counsel for the Liquidator submits that the liquidation process resumed on 12.12.2023 with the dismissal of the Appeal by Hon'ble NCLAT. The said submission is not acceptable in the given facts and circumstances.
35. We note that the Liquidator had himself filed IA/3579/2025 seeking exclusion of period from 02.02.2023 (date of liquidation order) till 09.04.2025 (date of appointment of Respondent as Liquidator) from the liquidation period on the ground that no effective steps were taken for the liquidation of the Corporate Debtor. However, considering the fact that liquidation was stayed by the Hon'ble NCLAT only on 23.02.2023 which was lifted on 12.12.2023, this Tribunal excluded the period only from 23.02.2023 till 12.12.2023. Further, since the new liquidator was appointed only on 09.04.2025, extension of one year was granted from

09.04.2025 to 08.04.2026. The said IA was accordingly disposed of vide order dated 07.08.2025.

36. Thus, as per the order dated 07.08.2025 passed in IA/3579/2025, only the period between 23.02.2023 till 12.12.2023 has been excluded from the liquidation period.
37. However, since the office of the Liquidator was vacant from 27.10.2023 till 09.04.2025, the liquidation process of the Corporate Debtor had not moved forward. In the absence of the liquidator, the Applicant would not be in a position to intimate its decision under section 52 of the Code or take any steps further. It was only with the appointment of the Respondent herein on 09.04.2025 that the liquidation of the Corporate Debtor had *de facto* resumed.
38. Under such circumstances, the period from 12.12.2023 till 09.04.2025 is liable to be excluded in calculating the period under Regulation 21A of the Code.
39. Thus, after excluding the already elapsed 20 days from 02.02.2023 till 23.02.2023, the remaining period of 10 days left for the Applicant to exercise its option to realise or relinquish its security interest calculated from 09.04.2025 would expire on 18.04.2025.
40. The contention of the Applicant is that the period of 10 days should be calculated from 02.05.2025 i.e. the date when communication from the Respondent regarding his taking charge as the Liquidator of the Corporate Debtor was addressed to the Applicant.
41. Proviso to Regulation 21A (1) of the Liquidation Regulations clearly reads that the Applicant has to communicate its decision to the Liquidator about the relinquishment or realisation of its security interest within 30 days from the liquidation commencement date. Thus, the important date which needs to be considered here is the liquidation commencement date and not the date when the liquidator takes charge or the date when

communication is sent from the Liquidator to the creditors. Thus, the contention of the Applicant in this regard is liable to be rejected.

42. The Applicant had earlier filed IA/621/2025 seeking similar set of reliefs against the erstwhile Liquidator as sought in the present application. While the said IA was pending, the present Liquidator came to be appointed on 09.04.2025. Therefore, the IA/621/2025 was disposed of on the same day and the Liquidator was directed to carry on liquidation activities in accordance with law.
43. Thus, the Applicant was very well aware of the appointment of the Liquidator on 09.04.2025. Despite that, the Applicant took no prompt action to intimate about its decision to realise its security interest or took any further step in this regard. The decision of the Applicant to realise its security interest was intimated to the Liquidator only on 19.05.2025, much after the expiry of the prescribed timeline under Regulation 21A of the Liquidation Regulations.
44. It is also relevant to consider the contention of the Liquidator regarding non-compliance of Regulation 37 of the Liquidation Regulations. The said Regulation is reproduced below:

37. Realization of security interest by secured creditor

(1) A secured creditor who seeks to realize its security interest under section 52 shall intimate the liquidator of the price at which he proposes to realize its secured asset.

(2) The liquidator shall inform the secured creditor within twenty one days of receipt of the intimation under sub-regulation (1) if a person is willing to buy the secured asset before the expiry of thirty days from the date of intimation under sub-regulation (1), at a price higher than the price intimated under sub-regulation (1).

(3) Where the liquidator informs the secured creditor of a person willing to buy the secured asset under sub-regulation (2), the secured creditor shall sell the asset to such person.

(4) If the liquidator does not inform the secured creditor in accordance with sub-regulation (2), or the person does not buy the secured asset in accordance with sub-regulation (2), the secured creditor may realize the secured asset in the manner it deems fit, but at least at the price intimated under sub-regulation (1).

(5) Where the secured asset is realized under sub-regulation (3), the secured creditor shall bear the cost of identification of the buyer under sub-regulation (2).

(6) Where the secured asset is realized under sub-regulation (4), the liquidator shall bear the cost incurred to identify the buyer under sub-regulation (2).

(7) The provisions of this Regulation shall not apply if the secured creditor enforces his security interest under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) or the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993).

(8) A secured creditor shall not sell or transfer an asset, which is subject to security interest, to any person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor.

45. Regulation 37(1) provides that where a secured creditor seeks to realise its security interest, it shall intimate to the Liquidator the price at which it proposes to realise its secured asset.
46. It is the case of the Liquidator that the Applicant has not intimated any proposed price for realisation of its security interest.
47. Per contra, the Applicant rebutted that since the Liquidator has not permitted the applicant to realise the security interest, the question of intimating the proposed price at which the applicant proposed to realise the security interest does not come into play.
48. The Applicant further submitted that as per sub-regulation 7 of regulation 37, the provisions of regulation 37 would not apply where the secured

creditor enforces his security interest under the SARFAESI Act or the Recovery of Debts and Bankruptcy Act, 1993.

49. However, neither the Applicant has placed on record any material/document to show that any steps have been taken by the Applicant under the SARFAESI Act or DRT Act to recover/realise its security interest nor has made any submissions regarding SARFAESI proceedings.
50. Under the said circumstances, we are of the view that the Applicant has not been able to demonstrate any effective and prompt steps taken by it to realise the security interest except seeking permission of the liquidator for realisation of security interest and that too without complying with the provisions of Regulation 21A of the Liquidation Regulations.
51. The scheme and objective of the Code is to conclude various activities within time-bound process. The compliance of the timelines in Regulation 21A of the Liquidation Regulations being mandatory in nature, the Applicant cannot now be permitted to realise its security interest and accordingly, the assets which are subject to the security interest become part of the liquidation estate.
52. With above observations and directions, the IA/4943/2025 is **dismissed**. The interim order dated 18.11.2025 directing the Liquidator to not conduct the sale of the asset over which the applicant has security interest stands vacated.

Sd/-

Hariharan Neelakanta Iyer
Member (Technical)

Sd/-

Lakshmi Gurung
Member (Judicial)

Uma, LRA