NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1276 of 2026

Arising out of Impugned Order dated 30.06.2026 passed by the National Company Law Tribunal, Ahmedabad Bench in IA No. 440(AHM)2025 in CP (IB) no. 59 of 2019.

IN THE MATTER OF:

Gondwana Engineers Limited
Through its Director, Mr. Rakshit Doshi,
Add: 82, Abhyankar Nagar, Park Road,
Nagpur, Maharashtra, India, PIN- 440010 — Appellant

VERSUS

Mr. Bijay Murmuria
Having Registration No: IBBI/IPE-0020 /IPA-1 /2022-23 / 50023
Registered address with IBBI: 1 8B,
Middleton Street,
6A Geetanjali Apartments,
Kolkata, West Bengal, India — Respondent No.1

Areion Finserve Private Limited
Having its registered office at: BGF - 1 Dilkhush Industrial Complex,
GT Karnal Road, Azadpur, New Delhi- 110033 — Respondent No.2

IDBI Bank Limited
Ahmedabad Branch,
Opp. Municipal Staff Quarters
Near Lal Bungalow, C.G. Road,
Ahmedabad – 380009 — Respondent No.3

Bank of Baroda
(Earlier known as Dena Bank)

Having its office at: 2nd Floor, Dena Laxmi Building, 188-A, Ashram Road, Navrangpura, Ahmedabad-380009 Respondent No.4

Bank of Maharashtra
Ashram Road Branch,
Embassy Market, Near Dinesh Hall, 2
Ahmedabad – 380009 Respondent No.5

Mr. Ashit Dhirajlal Doshi
103 / A, 10th Floor, Tirthbhoomi,
B/h Law College Ellis bridge,
Ahmedabad-380006 Respondent No.6

Mr. Rakshit Dhirajlal Doshi
103 / A, 10th Floor, Tirthbhoomi,
B/h Law College Ellis bridge,
Ahmedabad-380006 Respondent No.7

Raj Radhe Finance Ltd.
Tilak Raj Complex, 105-106,
Panchavati Society, Ambawadi,
Ahmedabad- 380006 Respondent No.8

Present:

For Appellant	Mr. Ashutosh Kumar, Mr. Manish Kumar Choudhary, Ms. Srishti Choudhary & Ms. Shefali Choudhary, Advocates
For Respondents	Mr. Kunal Vaishnav & Mr. Yuvraj Thakore, Advocates for Liquidator

J U D G E M E N T

(21.08.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal is filed by the Appellant i.e., Gondwana Engineers Limited through its Director Mr. Rakshit Doshi, under Section 61 of the Insolvency and Bankruptcy Code, 2016, ("**Code**") arising out of Impugned Order dated 30.06.2026 passed by the National Company Law Tribunal, Ahmedabad Bench ("**Adjudicating Authority**") in IA No.440(AHM)2025, in CP (IB) No. 59 of 2019.

Mr. Bijay Murmuria, who is the authorized Insolvency Professional of Sumedha Management Solutions Private Limited; Liquidator of Doshion Private Limited (Corporate Debtor), is the Respondent No.1 herein.

Areion Finserve Private Limited, is the Respondent No.2 herein.

IDBI Bank Limited is the Respondent No.3 herein.

Bank of Baroda is the Respondent No.4 herein.

Bank of Maharashtra is the Respondent No.5 herein.

Mr. Ashit Dhirajlal Doshi, who was the erstwhile director of the Corporate Debtor and are presently directors of Appellant, is the Respondent No.6 herein.

Mr. Rakshit Dhirajlal Doshi, who is the erstwhile director of the Corporate Debtor and are presently directors of Appellant, is the Respondent No.7 herein.

Raj Radhe Finance Ltd. is the Respondent No.8 herein.

2. The Appellant submitted that the controversy involved in the present Appeal concerns the property bearing House No. 9, Sigma Corporate Park, Bodakdev, Ahmedabad (hereinafter referred to as the "Sigma-9 Property"), which has remained continuously mortgaged in favour of Bank of Maharashtra and its lawful assignees. The Appellant submitted that the Adjudicating Authority has erroneously treated the said property as forming part of the liquidation estate by virtually extinguishing a valid and subsisting registered mortgage without any authority under the Code.

3. The Appellant submitted that the factual background clearly demonstrates that the Appellant has maintained banking relations with Bank of Maharashtra for more than three decades. The Appellant approached Bank of Maharashtra as early as the year 1993 seeking various credit facilities, including working capital limits and bank guarantees. The said facilities were initially sanctioned on 18.11.1993 and were thereafter periodically renewed, enhanced and extended from time to time till the year 2015. The Appellant submitted that the long-standing banker-customer relationship between the parties forms the foundation of the subsequent restructuring and security arrangements, all of which have been completely overlooked by the Adjudicating Authority.

4. The Appellant further submitted that the Corporate Debtor, Doshion Private Limited, acquired the Sigma-9 Property through a registered Sale Deed dated 30.12.2009 from Mr. Ilesha P. Shah for a consideration of ₹3.56 Crores. Immediately thereafter, Bank of Maharashtra sanctioned a term loan of ₹3.20 Crores to the Corporate Debtor on 06.01.2010/07.01.2010 against an equitable mortgage created over the Sigma-9 Property. The corresponding charge was duly registered with the Registrar of Companies in accordance with the Companies Act, 2013. Thus, Bank of Maharashtra became the first secured creditor holding a valid and enforceable mortgage over the subject property.

5. The Appellant submitted that thereafter Respondent No.3, IDBI Bank Limited, sanctioned credit facilities aggregating ₹75 Crores in favour of the Corporate Debtor, while Respondent No.4, Dena Bank (now Bank of Baroda), sanctioned additional facilities amounting to ₹65 Crores. Since Bank of Maharashtra already held the first mortgage over the Sigma-9 Property, the consortium banks sought permission for creation of a second pari passu charge. Consequently, Bank of Maharashtra issued a No Objection Certificate dated 10.09.2012 permitting creation of a second pari passu charge over the property in favour of IDBI Bank and Dena Bank.

6. The Appellant submitted that pursuant to the aforesaid No Objection Certificate, a Memorandum recording extension of the equitable mortgage came to be executed on 16.01.2013. The Appellant contended that this very transaction clearly establishes that Bank of Maharashtra continued to retain the first mortgage while merely consenting to the creation of a subordinate security interest in favour of the consortium lenders. At no point of time was Bank of Maharashtra divested of its existing security rights.

7. The Appellant further submitted that during the year 2014 the consortium lenders undertook a comprehensive restructuring of their respective credit facilities. Dena Bank, by sanction letter dated 12.09.2014, restructured and revised its financial assistance aggregating ₹87.77 Crores under fresh contractual terms and conditions. Similarly, IDBI Bank, by sanction letter dated 20.08.2014, sanctioned revised facilities aggregating ₹93.48 Crores under an altogether new set of contractual arrangements. The Appellant submitted that these restructuring exercises fundamentally altered the earlier lending arrangements and necessarily required fresh perfection of security interests in accordance with law.

8. The Appellant submitted that recognizing this legal position, the Corporate Debtor itself addressed a communication dated 29.09.2014 to Bank of Maharashtra requesting issuance of a fresh No Objection Certificate for continuation of the second pari passu charge over the Sigma-9 Property. Fresh loan agreements and security documents were thereafter executed between the consortium lenders and the Corporate Debtor, and corresponding charges were registered with the Registrar of Companies. However, the Appellant contended that despite restructuring of the consortium facilities, the mandatory steps necessary for continuation of the second pari passu charge were never completed.

9. The Appellant further submitted that a Joint Lenders' Meeting was convened on 10.03.2015 to expedite extension of the second charge over the Sigma-9 Property. Shortly thereafter, Bank of Maharashtra independently restructured the Appellant's own facilities on 17.03.2015 and accepted the Sigma-9 Property as additional security for securing the Appellant's exposure aggregating ₹95.41 Crores. The Appellant submitted that this restructuring formed part of one composite commercial transaction and cannot be artificially segregated into independent transactions as has been erroneously done by the Adjudicating Authority.

10. The Appellant submitted that Respondent Nos.6 and 7, namely Mr. Ashit Dhirajlal Doshi and Mr. Rakshit Dhirajlal Doshi, were admittedly the erstwhile Directors of the Corporate Debtor and presently continue as Directors of the Appellant Company. Owing to the common management of both entities, the Corporate Debtor agreed to secure the liabilities of the Appellant by creating security over the Sigma-9 Property.

11. The Appellant further submitted that on 20.03.2015, Bank of Maharashtra issued a No Due Certificate in respect of the earlier facility granted to the Corporate Debtor. However, on the very same day, and as part of one integrated restructuring transaction, the Sigma-9 Property was simultaneously mortgaged afresh in favour of Bank of Maharashtra, Pune as security for the facilities extended to the Appellant, with the Corporate Debtor acting as guarantor. The corresponding charge was duly registered with the Registrar of Companies, thereby creating a fresh registered mortgage in favour of Bank of Maharashtra.

12. The Appellant submitted that the Adjudicating Authority gravely erred in treating the discharge of the earlier facility as an independent event resulting in extinction of Bank of Maharashtra's priority. It was contended that the discharge of the earlier facility and execution of the fresh mortgage constituted one indivisible commercial restructuring transaction. The mortgage created on 20.03.2015 did not arise after an interruption of security but formed part of a continuous chain of secured transactions ensuring uninterrupted security in favour of Bank of Maharashtra.

13. The Appellant further submitted that immediately thereafter, by internal communication dated 06.04.2015, Bank of Maharashtra, Pune expressly instructed its Ahmedabad Branch not to cede any second charge over the Sigma-9 Property without obtaining prior approval from the competent authority. The Appellant contended that this contemporaneous internal correspondence assumes considerable significance since it unequivocally establishes that no fresh second pari passu charge was ever approved after restructuring of the consortium facilities. It was specifically submitted that no fresh Memorandum recording extension of equitable mortgage or tripartite agreement was ever executed after March 2015 in favour of the consortium banks.

The Appellant submitted that this contemporaneous documentary evidence demolishes the very foundation upon which the impugned order proceeds. The Adjudicating Authority completely overlooked these documents despite their direct bearing on the controversy and instead proceeded on the erroneous assumption that the consortium lenders continued to enjoy an enforceable second pari passu charge notwithstanding the admitted restructuring of the lending arrangements. The Appellant therefore submitted that the entire factual foundation adopted by the Adjudicating Authority stands vitiated by non-consideration of material evidence, resulting in findings which are contrary to the documentary record and settled principles governing mortgages, restructuring of secured debts and registration of charges.

14. The Appellant further submitted that despite the fact that the second pari passu charge was never perfected after the restructuring of the consortium facilities, Respondent No. 4, Bank of Baroda (formerly Dena Bank), instituted Original Application No. 282 of 2017 before the Debts Recovery Tribunal, Ahmedabad on 08.05.2017 under the provisions of the Recovery of Debts and Bankruptcy Act, 1993, seeking recovery of its dues by asserting an alleged second pari passu charge over the Sigma-9 Property. The Appellant contended that although the proceedings directly concerned the security interest over the subject property, the Appellant was never impleaded as a party to the said proceedings despite being the beneficiary of the registered mortgage created on 20.03.2015. Consequently, the Appellant was deprived of any opportunity to place the complete factual and legal position before the Debts Recovery Tribunal.

15. The Appellant submitted that during the pendency of the recovery proceedings, Respondent No. 4 also invoked the provisions of Section 13(4) of the SARFAESI Act, 2002 and initiated measures for taking symbolic possession of the Sigma-9 Property. The said action was challenged before the Debts Recovery Tribunal in Securitisation Application No. 154 of 2017. By order dated 17.10.2018, the Debts Recovery Tribunal observed that there was no dispute regarding the creation of a second charge in favour of the Respondent Bank over the subject property. The Appellant submitted that the said observation was rendered solely on the basis of the material placed by the consortium banks and without consideration of the subsequent restructuring documents, the internal communications of Bank of Maharashtra or the absence of any fresh tripartite agreement after restructuring. It was further submitted that the Appellant was not a party to those proceedings and, therefore, such observations cannot bind the Appellant or determine its proprietary rights.

16. The Appellant further submitted that the Debts Recovery Tribunal, Ahmedabad, by its subsequent order dated 08.11.2019 in O.A. No. 282 of 2017, proceeded to hold that upon liquidation of the earlier loan advanced by Bank of Maharashtra, the consortium lenders automatically stepped into the shoes of the first charge holder and that any subsequent mortgage created in favour of Bank of Maharashtra would remain subordinate to the rights of the consortium banks. The Appellant submitted that the aforesaid findings were rendered on an erroneous factual premise and on account of suppression of material facts. The Debt Recovery Tribunal failed to appreciate that the earlier facility granted by Bank of Maharashtra was discharged simultaneously with the execution of a fresh registered mortgage dated 20.03.2015, forming part of one composite restructuring transaction. The Appellant contended that the Debts Recovery Tribunal also failed to consider that Bank of Maharashtra itself had expressly declined to cede any fresh second charge after restructuring and that no Memorandum recording extension of equitable mortgage was ever executed in favour of the consortium banks after March 2015.

17. The Appellant further submitted that being seriously prejudiced by the aforesaid order, although not a party to the original proceedings, it filed Review

Application No. 1 of 2020 before the Debts Recovery Tribunal seeking review of the order dated 08.11.2019. The Appellant submitted that the said Review Application continues to remain pending adjudication. Accordingly, the findings contained in the order dated 08.11.2019 have not attained finality, particularly qua the Appellant, and therefore could not have been treated by the Adjudicating Authority as conclusive or binding while deciding the applications under the Code.

18. The Appellant submitted that while the aforesaid proceedings were pending, Respondent No. 3 initiated proceedings under Section 7 of the Code, against the Corporate Debtor. Pursuant thereto, the Corporate Debtor was admitted into the Corporate Insolvency Resolution Process (CIRP) by order dated 31.08.2021. The Appellant submitted that the initiation of CIRP did not, in any manner, alter or extinguish the existing proprietary rights of secured creditors over the Sigma-9 Property, nor did it affect the validity of the registered mortgage created in favour of Bank of Maharashtra.

19. The Appellant further submitted that Bank of Maharashtra independently instituted Original Application No. 348 of 2021 before the Debts Recovery Tribunal, Nagpur seeking recovery of an amount of ₹67,35,15,663.64 from the Appellant. The Corporate Debtor, together with Respondent Nos. 6 and 7, namely Mr. Ashit Dhirajlal Doshi and Mr. Rakshit Dhirajlal Doshi, were also arrayed as parties in the said proceedings. The Appellant submitted that the said Original Application remains pending adjudication and constitutes an independent proceeding concerning enforcement of the security created in favour of Bank of Maharashtra.

20. The Appellant further submitted that with the objective of resolving its liabilities towards Bank of Maharashtra under a One-Time Settlement (OTS), it approached Respondent No. 2, Aerion Finserve Private Limited, seeking financial assistance for part funding of the settlement amount. Pursuant thereto, Respondent No. 2 issued a sanction letter dated 14.09.2023 sanctioning financial assistance of Rs.7 Crores to the Appellant for facilitating payment of the OTS amount aggregating approximately Rs.25 Crores, including delayed payment interest.

21. The Appellant submitted that shortly thereafter, by order dated 03.10.2023 passed in I.A. No. 769 of 2021, the Adjudicating Authority directed liquidation of the Corporate Debtor. Consequent upon the liquidation order, a public announcement in Form B came to be published on 11.10.2023 inviting claims from creditors and other stakeholders. The Appellant submitted that commencement of liquidation proceedings did not enlarge the liquidation estate nor did it confer jurisdiction upon the Liquidator to invalidate pre-existing registered mortgages or adjudicate competing proprietary rights amongst secured creditors.

22. The Appellant further submitted that on 17.10.2023, Respondent No. 2 duly registered its charge over the Sigma-9 Property with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) for the secured amount of Rs.95.41 Crores. The Appellant submitted that such registration further affirmed the continued existence and validity of the security interest originally held by Bank of Maharashtra.

23. The Appellant submitted that thereafter, Bank of Maharashtra and Respondent No. 2 executed a Registered Assignment Deed dated 27.10.2023, which was duly registered on 30.11.2023, whereby Bank of Maharashtra assigned all its rights, title, interest and security in favour of Aerion Finserve Private Limited. Consequent upon the said assignment, the Appellant filed Form CHG-1 before the Registrar of Companies on 06.12.2023 seeking registration of modification of charge, and the Registrar of Companies thereafter issued the Certificate of Registration of Modification of Charge dated 15.02.2024. The Appellant submitted that these statutory registrations conclusively establish that the mortgage created in favour of Bank of Maharashtra remained subsisting and that the entire security interest stood lawfully assigned to Aerion Finserve without any interruption.

24. The Appellant further submitted that Respondent No. 2 lodged its claim before the Liquidator on 06.07.2024 asserting its rights as the assignee of Bank of Maharashtra. However, the said claim came to be rejected by the Liquidator through email dated 15.07.2024. Aggrieved by the rejection, Respondent No. 2 addressed a detailed representation dated 16.08.2024, which was forwarded to the Liquidator on 26.08.2024. The Liquidator thereafter issued a reply dated 07.09.2024 maintaining rejection of the claim.

25. The Appellant submitted that the rejection of Respondent No. 2's claim merely affected participation in the liquidation process and could never result in extinguishment of the underlying mortgage or the proprietary rights attached thereto. It was contended that the existence of a valid mortgage is entirely distinct from admission or rejection of a claim in liquidation proceedings, and the Adjudicating Authority failed to appreciate this settled legal distinction.

26. The Appellant further submitted that the Liquidator initially preferred I.A. No. 275 of 2025 before the Adjudicating Authority challenging the assignment in favour of Aerion Finserve. However, the said application was withdrawn with liberty to file a fresh application. Subsequently, Respondent No. 2 assigned the debt together with the corresponding security interest to Raj Radhe Finance Limited by Assignment Agreement dated 02.05.2025. The Appellant submitted that upon execution of the said Assignment Agreement, Raj Radhe Finance Limited stepped into the shoes of the original secured creditor and became entitled to every proprietary, contractual and statutory right earlier vested in Bank of Maharashtra and thereafter in Aerion Finserve.

27. The Appellant submitted that the assignment transactions neither created any fresh mortgage nor altered the nature of the existing security interest. They merely transferred the rights of the original secured creditor to its lawful assignee in accordance with settled principles governing assignment of debts and actionable claims. Consequently, the validity and priority of the mortgage continued unaffected notwithstanding the subsequent assignments.

28. The Appellant submitted that after withdrawal of I.A. No. 275 of 2025, the Respondent No. 1/Liquidator instituted amended I.A. No. 440 of 2025 under Section 60(5) of the Code, read with Rule 11 of the National Company Law Tribunal Rules, 2016. Through the said application, the Liquidator sought declarations that the Assignment Deed dated 27.10.2023 executed between Bank of Maharashtra and Aerion Finserve Private Limited, insofar as it related to the Sigma-9 Property, was illegal and liable to be quashed. The Liquidator further sought a declaration that the Sigma-9 Property formed part of the liquidation estate of the Corporate Debtor and also challenged the subsequent Assignment Agreement dated 02.05.2025 executed in favour of Raj Radhe Finance Limited. The Appellant submitted that the reliefs sought by the Liquidator unmistakably demonstrate that the dispute pertained to proprietary rights, competing mortgages, validity of assignments and inter se priority amongst secured creditors, none of which arise out of the insolvency resolution or liquidation process contemplated under the Code.

29. The Appellant further submitted that upon receipt of notice, it filed a detailed Reply Affidavit controverting each of the allegations made by the Liquidator. The Appellant specifically pleaded that the application itself was not maintainable under Section 60(5) of the Code, as the questions sought to be adjudicated involved complex issues of title, validity of registered mortgages, contractual obligations, registration of charges under the Companies Act, 2013 interpretation of restructuring documents and competing proprietary rights between secured creditors.

30. The Appellant submitted that Raj Radhe Finance Limited, being the lawful assignee of the debt and security interest originally created in favour of Bank of Maharashtra, also instituted I.A. No. 1137 of 2025 under Sections 42 and 60(5)(c) of the Code. Through the said application, it sought admission of its claim in the liquidation proceedings, permission to realise the secured asset outside liquidation in accordance with Section 52 of the Code, exclusion of the Sigma-9 Property from the liquidation estate, condonation of delay in preferring the proceedings and other consequential reliefs. The Appellant submitted that the very institution of I.A. No. 1137 of 2025 demonstrated the existence of bona fide competing proprietary claims over the subject property, thereby reinforcing that the controversy could not have been adjudicated in summary proceedings.

31. The Appellant further submitted that the Liquidator thereafter preferred I.A. No. 525 of 2026 seeking amendment of I.A. No. 440 of 2025 by incorporating an additional prayer directing Raj Radhe Finance Limited to hand over the original title deeds relating to the Sigma-9 Property. The Appellant contended that this amendment further enlarged the scope of the proceedings by seeking reliefs directly affecting ownership documents and proprietary interests, matters which lie completely outside the statutory powers conferred upon the Liquidator under Sections 35 and 36 of the Code.

32. The Appellant further submitted that the jurisdiction conferred under Section 60(5) of the Code is intended to facilitate effective conduct of the insolvency resolution and liquidation process. It is neither intended nor designed to substitute the jurisdiction of civil courts or other competent fora in matters involving adjudication of title or competing proprietary claims.

33. The Appellant contended that the Adjudicating Authority also failed to appreciate that the Liquidator merely functions as a statutory custodian of the assets of the Corporate Debtor. Under Sections 35 and 36 of the Code, the Liquidator is obligated to preserve, protect and realise the liquidation estate in accordance with law. However, these statutory powers do not authorize the Liquidator to question the validity of registered mortgages, challenge assignment deeds or seek declarations concerning proprietary rights belonging to independent secured creditors. The Liquidator neither represents one secured creditor against another nor can he litigate disputes concerning mortgage priority in the absence of any independent cause of action vested in him.

34. The Appellant submitted that the Adjudicating Authority further exceeded its jurisdiction by recording findings entirely beyond the pleadings contained in I.A. No. 440 of 2025. While the application principally challenged the assignment deeds, the Adjudicating Authority proceeded to determine the legal validity of the mortgage dated 20.03.2015, declare the priority between Bank of Maharashtra, IDBI Bank and Bank of Baroda, and record findings regarding the continuing effect of the order dated 08.11.2019 passed by the Debts Recovery Tribunal.

These issues neither arose from the pleadings nor constituted the reliefs sought before the Adjudicating Authority. It is well settled that no court or tribunal can travel beyond the pleadings and grant declarations which have neither been prayed for nor put in issue between the parties.

35. The Appellant further submitted that by declaring the mortgage dated 20.03.2015 to be subordinate to the alleged charge of the consortium lenders, the Adjudicating Authority has effectively adjudicated vested proprietary rights over the Sigma-9 Property. Such adjudication directly affects valuable property rights and contractual interests of secured creditors. The Code nowhere authorises the Adjudicating Authority to extinguish or dilute existing mortgages while exercising jurisdiction under Section 60(5) of the Code.

36. The Appellant submitted that the impugned order is vitiated by its complete failure to consider the mandatory provisions governing registration of charges under the Companies Act, 2013. It was contended that Sections 77 and 79 of the Companies Act, 2013 recognise the legal sanctity of registered charges and prescribe the statutory mechanism governing their creation, modification and registration. Once the charge in favour of Bank of Maharashtra and its subsequent modification stood duly registered with the Registrar of Companies, the same could not be ignored or declared subordinate merely on assumptions regarding the earlier lending arrangements. Equally, if the consortium lenders claimed continuation of a second pari passu charge after restructuring of their facilities, it was incumbent upon them to demonstrate compliance with the statutory requirements governing creation and registration of such charge. The Appellant submitted that the absence of any fresh registration or supporting security documentation after restructuring clearly demonstrates that no enforceable second pari passu charge survived in favour of the consortium lenders.

37. The Appellant further submitted that the Adjudicating Authority failed to appreciate the settled legal principle governing assignment of debts and securities. Upon execution of the Registered Assignment Deed dated 27.10.2023 by Bank of Maharashtra in favour of Aerion Finserve Private Limited, every proprietary, contractual and statutory right attached to the mortgage stood lawfully assigned. Subsequently, upon execution of the Assignment Agreement dated 02.05.2025 in favour of Raj Radhe Finance Limited, the assignee acquired all the rights, title and interest previously vested in the assignor. The Appellant submitted that an assignee merely steps into the shoes of the assignor and succeeds to the same rights without any diminution or impairment thereof. Consequently, the security interest originally created in favour of Bank of Maharashtra continued to subsist notwithstanding the subsequent assignments, and the Adjudicating Authority erred in holding otherwise.

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

39. Per contra, the Respondent No.1, the contesting Respondent, denied all the averments made by the Appellant as misleading and baseless.

40. The Respondent No. 1 stated that the Adjudicating Authority held that the security interest claimed through Bank of Maharashtra had become subordinate and had ultimately lapsed into the liquidation estate by operation of Regulation 21A (3) of the IBBI (Liquidation Process) Regulations, 2016, and consequently directed the handover of the original title deeds to the Liquidator. The Respondent No. 1 contended that the present Appeal is merely a proxy litigation, has become academic in nature, and is otherwise devoid of any merit.

41. The Respondent No. 1 submitted that Sigma-9 is admittedly the property of the Corporate Debtor. It was stated that Bank of Maharashtra originally held the first charge over the said property in respect of the Loan Against Property extended to the Corporate Debtor, whereas IDBI Bank and Dena Bank (now Bank of Baroda) held a second pari passu charge pursuant to the No Objection Certificate issued by Bank of Maharashtra. The Respondent No. 1 contended that upon issuance of the No Due Certificate by Bank of Maharashtra after full repayment of the Loan Against Property, the first charge stood extinguished, resulting in the consortium's second charge automatically becoming the first charge over Sigma-9. It was further submitted that this position had already been conclusively determined by the Debt Recovery Tribunal, Ahmedabad in OA No. 282 of 2017**,** and the said order continues to operate without any stay. The Respondent No. 1 further stated that on the very same day a fresh simple mortgage was created over Sigma-9 to secure the independent credit facilities granted to the Appellant, Gondwana Engineers Limited, with the Corporate

Debtor merely acting as guarantor. Consequently, such fresh mortgage could never inherit the priority attached to the earlier discharged security.

42. The Respondent No. 1 submitted that Bank of Maharashtra subsequently assigned its debt in favour of Areion Finserve, which in turn assigned the same to Raj Radhe Finance Limited. However, neither Bank of Maharashtra nor its assignees lodged their claim before the Liquidator within the prescribed time nor exercised the statutory option available under Section 52 of the Code, read with Regulation 21A. The Respondent No. 1 contended that Areion Finserve filed its claim only on 06.07.2024, approximately 240 days after commencement of liquidation, and the said claim was rightly rejected. It was further stated that IA No. 231 of 2025, IA No. 341 of 2025 and IA No. 1137 of 2025**,** challenging such rejection, were all dismissed and have remained unchallenged, thereby attaining finality. The Respondent No. 1 further submitted that liquidation commenced on 03.10.2023, the last date for submission of claims was 08.11.2023**,** and the statutory thirty-day period prescribed under Regulation 21A(1) also expired without any intimation from the secured creditor regarding its intention to realise the secured asset outside liquidation.

43. The Respondent No. 1 submitted that the present Appeal is not maintainable as it has been instituted by a party which is not an aggrieved person. It was contended that the Appellant, being merely the borrower, is neither the owner of Sigma-9 nor the holder of the assigned security interest, and therefore suffers no legal prejudice by the impugned order. The Respondent No. 1 stated that if any party could claim to be aggrieved by the finding that the security interest had lapsed into the liquidation estate, it was Raj Radhe Finance Limited, which has consciously chosen not to challenge either the dismissal of IA No. 1137 of 2025 or the impugned order. The Respondent No. 1 further contended that Sigma-9 would in any event remain part of the liquidation estate because it is an asset owned by the Corporate Debtor under Section 36(3) of the Code, and by virtue of Regulation 21A (3) the security interest automatically stood absorbed into the liquidation estate owing to the secured creditor's failure to comply with the mandatory statutory timelines. It was further submitted that since the rejection of the claim has attained finality, the Appellant cannot seek partial interference with an integrated common order in order to obtain indirect relief.

44. The Respondent No. 1 submitted that the consortium banks continue to enjoy the first charge over Sigma-9, whereas the subsequent mortgage created in favour of Bank of Maharashtra ranks only as a subordinate security. It was contended that the priority of mortgages is governed by Section 48 of the Transfer of Property Act, 1882**,** and not merely by the chronology of registration. Reliance was placed upon the judgment of the Hon'ble Supreme Court in ICICI Bank Ltd. v. SIDCO Leathers Ltd., (2006) 10 SCC 452, to contend that once the first charge of Bank of Maharashtra stood discharged, the consortium's earlier second charge automatically ascended to first priority. The Respondent No. 1 further stated that the Appellant's theory of a continuous or composite mortgage is wholly untenable, as the sanction letter issued by Bank of Maharashtra itself required closure of the Corporate Debtor's Loan Against Property before creation of the fresh mortgage. Accordingly, the discharge of the earlier mortgage and the creation of the subsequent mortgage were distinct transactions, and a fresh mortgage securing the debt of a different borrower could not inherit the priority attached to the discharged security. The Respondent No. 1 also contended that the DRT's finding recognising the consortium as the first charge holder remains operative and binding since it has never been stayed, and the pendency of a review petition filed by the Appellant cannot dilute or eclipse the binding effect of that adjudication. It was further submitted that the Adjudicating Authority independently arrived at the very same conclusion on the basis of the documentary evidence available on record.

45. The Respondent No. 1 submitted that the security interest claimed by the Appellant's assignees stood extinguished and merged into the liquidation estate by operation of law. It was contended that neither Bank of Maharashtra nor its assignees exercised the statutory option under Section 52 within the mandatory thirty-day period prescribed by Regulation 21A, and consequently the deeming fiction under Regulation 21A(3) automatically came into operation. The Respondent No. 1 stated that no avoidance proceedings under the Code were either necessary or initiated because the Adjudicating Authority did not invalidate the mortgage; rather, the security interest lapsed solely due to non-compliance with the mandatory statutory procedure. It was further contended that an assignee acquires the assigned rights subject to all existing legal disabilities, and reliance was placed upon the judgments of the Hon'ble Supreme Court in ICICI Bank Ltd. v. APS Star Industries Ltd., (2010) 10 SCC 1**,** as well as Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17, to emphasise that liquidation proceedings are required to be completed within strict timelines. The Respondent No. 1 further stated that registration of the charge with the Registrar of Companies or CERSAI merely evidences the existence of the charge and cannot override the mandatory statutory obligations imposed by the Code and the Liquidation Regulations.

46. The Respondent No. 1 submitted that the present Appeal is nothing but an abuse of the judicial process and constitutes yet another attempt by the suspended management of the Corporate Debtor, acting through related entities, to obstruct the liquidation proceedings. It was contended that the erstwhile directors of the Corporate Debtor, who are also the present directors of Gondwana Engineers Limited, and their control over the connected entities already stands recognised in judicial proceedings. The Respondent No. 1 stated that the Hon'ble Gujarat High Court**,** in its judgment dated 13.10.2025, specifically observed that the suspended management exercises control over the petitioners, while an earlier appeal filed by Gondwana Engineers Limited had also been dismissed by this Appellate Tribunal. It was further submitted that immediately after the order directing the tenants to vacate the Corporate Debtor's premises, the suspended management induced the assignee to lodge an extremely belated claim with the object of excluding Sigma-9 from the liquidation estate. The Respondent No. 1 contended that the present Appeal, filed by the borrower instead of the alleged secured creditor and immediately before the proposed auction, forms part of a continuous strategy to frustrate liquidation and defeat the object of value maximisation under the Code.

47. The Respondent No. 1 further submitted that the letter dated 26.06.2024 clearly demonstrates that the suspended management, who are simultaneously the directors of Gondwana Engineers Limited, addressed correspondence to the assignor only five days after the judgment dated 21.06.2024 passed in IA Nos. 63 of 2022 and 94 of 2022**,** whereby the tenants had been directed to vacate and hand over possession of the Corporate Debtor's properties. The Respondent No. 1 stated that Respondent Nos. 6 and 7 are the erstwhile directors of the Corporate Debtor as well as the present directors of Gondwana Engineers Limited, and that Gondwana Engineers Limited had itself been directed to vacate Sigma-9 by order dated 21.06.2024. It was therefore contended that the present Appeal is merely a continuation of the deliberate obstruction caused by the suspended management through its alter ego with the sole object of delaying liquidation and preventing the successful realisation of the assets of the Corporate Debtor.

48. Concluding arguments, the Respondent No.1 requested this Appellate Tribunal to dismiss the present Appeal.

Findings

49. At the outset, we note that the core controversy concerns the inter se priority of competing charges over an immovable property i.e. the Sigma-9 Property , owned by the Corporate Debtor, as between (a) a second pari-passu equitable mortgage created in 2012–13 in favour of IDBI Bank Limited (“Respondent No. 3”) and Dena Bank, now Bank of Baroda (“Respondent No. 4”/“BOB”), and (b) a Simple Mortgage Deed dated 20.03.2015 executed by the Corporate Debtor as guarantor-mortgagor in favour of Bank of Maharashtra (“Respondent No. 5”/“BOM”) to secure independent credit facilities extended by BOM to the Appellant a security interest subsequently assigned by BOM, first to Areion Finserve Private Limited (“Respondent No. 2”) and thereafter to Raj Radhe Finance Limited (“Respondent No. 8”). The Adjudicating Authority has held that the Sigma-9 Property forms part of the liquidation estate of the Corporate Debtor, and that the mortgage traceable to BOM ranks subordinate to the charge of IDBI Bank and BOB. Aggrieved thereby, the Appellant has preferred the present appeal.

50. The facts, as borne out from the paper-book and the impugned order (including the chronology recorded by the Adjudicating Authority at paragraph 31.4 thereof), may be briefly noticed as under:

Date	Event
30.12.2009	Doshion Private Limited (“the Corporate Debtor”) purchased House No. 9, Sigma Corporate, behind Rajpath Club, Bodakdev, Ahmedabad (“the Sigma-9 Property”).
07.01.2010	Bank of Maharashtra (“BOM”) sanctioned a Loan Against Property facility of Rs. 3.20 crore to the Corporate Debtor and obtained an equitable mortgage over the Sigma-9 Property, thereby becoming its first charge-holder.
10.09.2012	BOM issued a No Objection Certificate permitting creation of a second pari-passu charge over the Sigma-9 Property in favour of IDBI Bank Limited and Dena Bank (now Bank of Baroda, “BOB”), who had separately sanctioned facilities aggregating approximately Rs. 140 crore to the Corporate Debtor.
16.01.2013	A Memorandum recording extension of equitable mortgage was executed, whereby IDBI Bank and Dena Bank acquired a second pari-passu charge over the Sigma-9 Property, subordinate to the first charge of BOM.
20.08.2014 &12.09.2014	IDBI Bank and Dena Bank respectively restructured their credit facilities (to Rs. 93.48 crore and Rs. 87.77 crore), continuing to record the Sigma-9 Property as collateral security.
11.03.2015	A Joint Lenders’ Meeting was held between BOM and the IDBI-Dena Bank consortium concerning extension of the second charge.
20.03.2015	BOM issued a No Due Certificate closing the Corporate Debtor’s 2010 Loan Against Property account; on the very same day, Gondwana Engineers Limited (“the Appellant”) executed a fresh, independent Simple Mortgage Deed in favour of BOM over the Sigma-9 Property, securing the Appellant’s own separate credit facilities, with the Corporate Debtor furnishing the property as guarantor-mortgagor.

Date	Event
06.04.2015	BOM, Pune Branch informed BOM, Ahmedabad Branch that no second charge on the Sigma-9 Property was to be ceded without approval of the competent authority.
08.05.2017	Bank of Baroda instituted O.A. No. 282 of 2017 before the Debts Recovery Tribunal, Ahmedabad (“DRT”).
17.10.2018	The DRT, in S.A. No. 154/2017, upheld Bank of Baroda’s symbolic possession under Section 13(4) of the SARFAESI Act, 2002, recording that a second charge in its favour over the Sigma-9 Property was not in dispute.
08.11.2019	The DRT, Ahmedabad, in O.A. No. 282 of 2017, held that IDBI Bank and Dena Bank (BOB) became first charge-holders over the Sigma-9 Property upon discharge of BOM’s facility, and that any subsequent loan by BOM would rank subordinate thereto.
2020	The Appellant filed Review Application No. 1 of 2020 against the DRT order dated 08.11.2019; no order staying that order has been placed on record at any stage.
31.08.2021	The Corporate Debtor was admitted into CIRP in C.P.(IB) No. 59 of 2019.
03.10.2023	The Corporate Debtor was ordered to be liquidated; Mr. Bijay Murmuria, Authorised Insolvency Professional of Sumedha Management Solutions Private Limited, was appointed Liquidator (“the Liquidator”/“Respondent No. 1”). Public announcement under Regulation 12 followed on 11.10.2023, fixing 08.11.2023 as the last date for submission of claims and 08.12.2023 for verification.
27.10.2023(regd. 30.11.2023)	BOM executed an Assignment Agreement in favour of Areion Finserve Private Limited (“Respondent No. 2”), assigning its debt and security interest, including over the Sigma-9 Property. No claim was lodged by BOM in the liquidation, and no intimation under Section 52 read with Regulation 21A(1) was given by

Date	Event
	BOM or Areion Finserve within thirty days of the liquidation commencement date.
21.06.2024	The Adjudicating Authority, in I.A. Nos. 63 of 2022 and 94 of 2022, directed handing over of possession of the Corporate Debtor’s properties to the Liquidator.
06.07.2024	Areion Finserve filed Form-D before the Liquidator asserting rights over the Sigma-9 Property — nearly nine months after the liquidation commencement date and well beyond the prescribed timeline.
15.07.2024 –07.09.2024	The Liquidator rejected Areion Finserve’s claim for delay and non-compliance with Regulation 21A; reconsideration was sought and reiteratively declined.
24.01.2025 –08.07.2025	Areion Finserve’s I.A. Nos. 231 and 341 of 2025 (condonation of delay; challenge to rejection) were, after being filed, ultimately dismissed for non-prosecution on 08.07.2025; no order setting aside or staying that dismissal is on record.
12.03.2025	The Liquidator filed (amended) I.A. No. 440(AHM)2025 under Section 60(5) of the Code seeking declarations concerning the Sigma-9 Property and the assignment deeds.
02.05.2025	Areion Finserve assigned its rights to Raj Radhe Finance Limited (“Respondent No. 8”).
22.09.2025	Raj Radhe Finance Limited filed I.A. No. 1137(AHM)2025 under Section 42 read with Section 60(5)(c) of the Code, challenging rejection of the claim originally filed by Areion Finserve.
01.04.2026	The Liquidator filed I.A. No. 525(AHM)2026 seeking amendment of I.A. No. 440 of 2025 for a consequential direction for handover of the original title deeds of the Sigma-9 Property.

Date	Event
30.06.2026	The Adjudicating Authority passed the impugned Common Order disposing of I.A. Nos. 440(AHM)2025, 1137(AHM)2025 and 525(AHM)2026.
17.06.2026	The Liquidator issued a notice (with corrigendum) for auction of the Corporate Debtor's properties, including the Sigma-9 Property, fixed for 20.07.2026.
16.07.2026	The present appeal, together with applications for ad-interim stay of the impugned order and of the proposed auction, came to be filed.

51. The Adjudicating Authority framed four issues for determination, namely: (i) whether IDBI Bank and BOB acquired first charge over the Sigma-9 Property upon discharge of BOM's earlier dues, and the nature and effect of the mortgage subsequently created by the Appellant in favour of BOM; (ii) whether the assignment of debt by BOM to Areion Finserve, and thereafter to Raj Radhe Finance, conferred any rights on the assignees and required adjudication of the validity of those assignments; (iii) whether BOM and its assignees failed to exercise the option to realise their security interest within the period prescribed under Section 52 of the Code read with Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016, and whether rejection of Areion Finserve's claim warranted interference under Section 42 of the Code; and (iv) whether the Sigma-9 Property forms part of the liquidation estate and the Liquidator is entitled to its custody and control, including the original title deeds. On Issue (i), the

Adjudicating Authority held that upon BOM's No Due Certificate dated 20.03.2015 discharging its 2010 facility, the second pari-passu charge already vested in IDBI Bank and BOB with effect from 16.01.2013 automatically assumed the position of first charge, and that the Simple Mortgage Deed dated 20.03.2015 in favour of BOM, though validly created, ranked subordinate thereto. On Issue (ii), it declined to adjudicate upon or invalidate the assignment deeds, holding that the assignees merely stepped into the shoes of BOM and could acquire no greater right. On Issue (iii), it held that BOM and its assignees failed to intimate their election to realise security outside liquidation within thirty days as required by Regulation 21A(1), that the claim filed by Areion Finserve on 06.07.2024 was hopelessly delayed, and that rejection of that claim called for no interference under Section 42. On Issue (iv), it held that the Sigma-9 Property forms part of the liquidation estate under Section 36 of the Code and that the Liquidator is entitled to custody and control thereof, including the original title deeds, under Section 35.

52. In consequence, the Adjudicating Authority (a) partly allowed I.A. No. 440(AHM)2025, declaring the Sigma-9 Property to be part of the liquidation estate and holding that the security interest of Respondent Nos. 2 and 8 (Areion Finserve and Raj Radhe Finance), being subordinate and having lapsed into the liquidation estate under Regulation 21A(3), would not obstruct the Liquidator, while declining to quash the assignment deeds themselves; (b) dismissed I.A. No. 1137(AHM)2025 filed by Raj Radhe Finance Limited; and (c) allowed I.A. No.

525(AHM)2026, directing BOM, Areion Finserve, Raj Radhe Finance, or any person in possession of the original title deeds of the Sigma-9 Property to hand them over to the Liquidator within two weeks, failing which coercive steps under Sections 35(1)(n) and 70 of the Code were left open.

53. Having heard the matter and perused the paper-book, including the impugned order in its entirety, the said grounds resolve themselves into the following six Issues, which alone require determination and are dealt with issue-wise below:

ISSUE NO. (1) Whether I.A. No. 440(AHM)2025 involved adjudication of matters beyond the jurisdiction of the Adjudicating Authority under Section 60(5) of the Code.

ISSUE NO. (2) Whether the Adjudicating Authority erred in holding that the second pari-passu charge of IDBI Bank and BOB ranks in priority over the Simple Mortgage Deed dated 20.03.2015 in favour of BOM

ISSUE NO. (3) Whether the absence of registration of the IDBI Bank/BOB charge with the Registrar of Companies ("ROC")/CERSAI, and the alleged non-consideration of Sections 77 and 79 of the Companies Act, 2013, renders the impugned order perverse or per incuriam.

ISSUE NO. (4) Whether the pendency of Review Application No. 1 of 2020 against the DRT order dated 08.11.2019 detracts from the impugned order.

ISSUE NO. (5) Whether the impugned order suffers from internal inconsistency in simultaneously including the Sigma-9 Property in the liquidation estate and declining to set aside the assignment deeds dated 27.10.2023 and dated 02.05.2025.

ISSUE NO. (6) Whether the dismissal of I.A. No. 1137(AHM)2025 and the directions in I.A. No. 525(AHM)2026 call for interference by this Appellate Tribunal.

<u>Issue wise discussion</u>

ISSUE NO.(1) Whether I.A. No. 440(AHM)2025 involved adjudication of matters beyond the jurisdiction of the Adjudicating Authority under Section 60(5) of the Code.

54. The Appellant urged that I.A. No. 440(AHM)2025 was, in essence, an attempt to obtain declarations regarding proprietary rights, mortgage priority and inter se rights of secured creditors — matters said to be governed by the Transfer of Property Act, 1882 and general mortgage law, and therefore not amenable to the summary jurisdiction conferred by Section 60(5) of the Code.

55. This contention does not survive a plain reading of the statute. Section 60(5)(c) of the Code confers upon the Adjudicating Authority jurisdiction to entertain "any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor." The deliberate use of the word "priorities" forecloses the very contention now advanced: a dispute as to the inter se priority of charges over an asset of the Corporate Debtor, arising in the course of its liquidation, is a paradigm instance of the jurisdiction the provision was designed to confer, not a matter excluded from it.

56. Nor can the determination be characterised as collateral to liquidation. Unless the Adjudicating Authority determines whether, and subject to what encumbrance, the Sigma-9 Property forms part of the liquidation estate, the Liquidator cannot discharge the statutory duties cast upon him under Sections 35 and 36 of the Code to take custody, verify and realise the assets of the estate. The question "does this asset belong to the estate, and free of what claims" is not incidental to liquidation; it is foundational to it.

57. We also take into consideration that the Appellant's own reply dated 18.07.2025 before the Adjudicating Authority (recorded at paragraphs 8.1 to 8.13 of the impugned order) did not question the Adjudicating Authority's jurisdiction to decide priority at all; on the contrary, it squarely invited a decision on merits that the charge of IDBI Bank and BOB was never perfected for want of registration and could not prevail over the mortgage traceable to BOM. Having invited an adjudication on the very question of priority and having failed on merits, it is not open to the Appellant to contend for the first time before this Appellate Tribunal that the forum it invoked lacked jurisdiction to decide what it was asked to decide.

58. On the issue that the Adjudicating Authority travelled beyond the pleadings, we note that the reliefs sought in I.A. No. 440(AHM)2025 (extracted at paragraph 2 of the impugned order) expressly sought declarations as to the character of the Sigma-9 Property and the legality of the charges created by the assignment deeds qua that property. Determination of the underlying priority of mortgages was a necessary and inseverable incident of granting or refusing those very declarations; it cannot be said that relief was granted beyond the prayers. Issue No. 1 is accordingly answered against the Appellant.

Issue No. (2) Whether the Adjudicating Authority erred in holding that the second pari-passu charge of IDBI Bank and BOB ranks in priority over the Simple Mortgage Deed dated 20.03.2015 in favour of BOM?

59. The undisputed sequence is this: BOM acquired a first equitable mortgage on 07.01.2010; IDBI Bank and Dena Bank (BOB) acquired a second pari-passu charge with effect from 16.01.2013, pursuant to BOM's own No Objection Certificate dated 10.09.2012; and on 20.03.2015, BOM discharged the very facility that constituted its first charge (by issuing a No Due Certificate) while, on the same day, the Appellant executed an entirely fresh and independent Simple Mortgage Deed over the same property in favour of BOM, securing the Appellant's own, unrelated credit facilities, with the Corporate Debtor furnishing the property merely as guarantor-mortgagor.

60. On this sequence, the finding that the second pari-passu charge of IDBI Bank and BOB automatically assumed the position of first charge upon discharge of BOM's 2010 facility is unexceptionable and follows from elementary mortgage law: when a prior encumbrance is discharged, a subsisting subsequent encumbrance moves up in priority, there being no fresh, intervening right of a stranger created in between. The 2015 Simple Mortgage Deed, on the correct finding of the Adjudicating Authority, was not a renewal or continuation of the discharged 2010 mortgage but a new and independent transaction securing a different borrower (the Appellant) and different facilities; neither the sanction letter nor the mortgage deed reserved to BOM a continuation of its erstwhile first-ranking priority notwithstanding the intervening, already-vested rights of IDBI Bank and BOB.

61. In the absence of such a stipulation, Section 48 of the Transfer of Property Act, 1882 applies in its ordinary terms: successive rights created over the same immovable property rank in the order of their creation, and each later-created right is, absent special contract, subject to rights previously created. We are of considered view that this priority of a first-created charge under Section 48 of the Transfer of Property Act, 1882 is not displaced by provisions of company law governing distribution among secured creditors, and continues to bind unless the earlier charge-holder has itself relinquished its security.

62. The "composite transaction" argument of the Appellant is that discharge of the 2010 facility and creation of the 2015 mortgage formed one indivisible restructuring, such that BOM's priority ought to be treated as unbroken, does not withstand scrutiny of the parties and facilities involved. The 2010 facility was a Loan Against Property extended to the Corporate Debtor; the 2015 facility was an altogether different credit exposure extended to the Appellant, with the Corporate Debtor merely a guarantor. A restructuring that is "composite" only in the loose commercial sense of involving affiliated customers of the same bank does not, without more, operate in law to preserve a priority that depends on continuity of the very right, not continuity of the banking relationship. Indeed, BOM's own letter dated 19.03.2015 required that the 2010 facility "be closed before implementation" of the fresh sanction — contemplating sequential closure and fresh creation, not seamless continuation. The composite-transaction argument does not, therefore, assist the Appellant.

63. The Appellant's reliance on BOM Pune's internal communication dated 06.04.2015 to BOM Ahmedabad, asserting that no second charge was to be ceded without approval of competent authority was correctly held immaterial, since that communication post-dates, and could not retrospectively unwind, rights that had already vested in IDBI Bank and BOB with effect from 16.01.2013. A bank's unilateral, internal and subsequent communication to its own branch cannot extinguish or subordinate rights that third parties had already validly and irrevocably acquired.

64. Another Ground of the Appellant insofar as it relies on an alleged "modification of charge for the subject property by BOM, Ahmedabad on 12.07.2011," stands on a different footing altogether: this assertion appears for the first time in the Appeal. It finds no mention in the Appellant's own reply dated 18.07.2025 before the Adjudicating Authority, no place in the chronology recorded at paragraph 31.4 of the impugned order, and no corresponding Annexure is traceable in the present paper-book. A plea of fact neither pleaded nor proved below, unsupported by any document on the record of this appeal, cannot be permitted to be raised for the first time in appeal, more so where, if true, it concerns a document that would have been squarely within the possession of the Appellant or BOM and readily producible before the Adjudicating Authority. This limb of Ground is rejected.

65. On the issue that an assignee acquires every proprietary and contractual right of the assignor, and that assignment cannot diminish the rights attached to the assigned security does not, on examination, assist the Appellant; if anything, it confirms the correctness of the impugned order. The principle that an assignee steps into the shoes of, and can claim no greater right then, the assignor is precisely what the Adjudicating Authority applied at paragraphs holding that Areion Finserve and, in turn, Raj Radhe Finance, could acquire no more than the subordinate charge that BOM itself held.

Thus, Issue No 2 goes against the Appellant.

Issue No. 3: Whether the absence of registration of the IDBI Bank/BOB charge with the Registrar of Companies (“ROC”)/CERSAI, and the alleged non-consideration of Sections 77 and 79 of the Companies Act, 2013, renders the impugned order perverse or per incuriam?

66. The Appellant argued that in the absence of registration of the IDBI Bank/BOB charge with the ROC or CERSAI, that charge could never be perfected and cannot prevail over the mortgage traceable to BOM (which was itself registered with CERSAI on 17.10.2023 and with the ROC by Form CHG-1 dated 06.12.2023, culminating in a certificate of registration of modification of charge dated 15.02.2024), and that the impugned order, by not adverting to Sections 77 and 79 of the Companies Act, 2013, is perverse.

67. We find that this conflates two distinct legal consequences. Registration of a charge under Section 77 of the Companies Act, 2013 operates as constructive notice to persons dealing with the company and, under sub-section (3) thereof, renders an unregistered charge liable to be disregarded by the liquidator and by other creditors of the company. It is not, however, the mode of creation of the charge; the charge here was created by the underlying contract, the equitable mortgage effected through the NOC dated 10.09.2012 and the Memorandum dated 16.01.2013 and continues to bind the immediate parties to that transaction and those claiming through them with notice of it, regardless of registration. Sections 77 and 79 of the Companies Act, 2013 exist to protect the liquidator and other creditors dealing with the company without notice of an unregistered charge; they were not enacted to confer, upon a subsequent chargee who otherwise had notice (actual or constructive) of an earlier charge, a priority it could not otherwise claim.

68. We observe that it is the Liquidator, the very party for whose protection Section 77(3) exists , who does not invoke non-registration to defeat the priority of IDBI Bank and BOB; to the contrary, the Liquidator treated their charge as the first charge, consistent with which IDBI Bank and BOB duly lodged their claims and relinquished their security to the liquidation estate under Section 52 of the Code . It is only the Appellant, a stranger to the IDBI Bank/BOB charge, aligned with the subsequent mortgagee, who seeks to invoke Section 77(3) for a purpose the provision was not designed to serve, namely to elevate its own subsequently created and, on facts, subordinate mortgage. Independently, as urged by Respondent No. 8 before the Adjudicating Authority, if the true grievance was the correctness or completeness of the entries on the register of charges maintained by the ROC, the remedy lay in an application for rectification of the register of charges under Section 87 of the Companies Act, 2013, and not in resisting, in summary liquidation proceedings under Section 60(5) of the Code, a declaration necessary for administration of the liquidation estate. This finding on this issue is affirmed.

69. The allied contention that the impugned order is rendered per incuriam for not expressly citing Sections 77 and 79 of the Companies Act, 2013 is equally misconceived. An order is not per incuriam merely because it does not advert, in terms, to a statutory provision that, on a correct application of law as discussed above, would not in any event have altered the outcome.

In totality the No. 3 is accordingly answered against the Appellant.

Issue No. 4: Whether the pendency of Review Application No. 1 of 2020 against the DRT order dated 08.11.2019 detracts from the impugned order.

70. The Appellant argued that the Adjudicating Authority erred in treating the DRT's order dated 08.11.2019 as conclusive, without regard to the pendency of Review Application No. 1 of 2020 filed by the Appellant against that order.

71. It is not disputed and nothing in the Appeal suggests otherwise that no order staying the operation of the DRT order dated 08.11.2019 has been obtained in the Review Application at any point since 2020. It is well settled that mere pendency of a review, revision or appeal does not, without an order of stay, suspend the operation or binding effect of the order under challenge; the order continues to bind the parties until set aside or stayed. The Adjudicating Authority was, therefore, correct to proceed on the footing that the findings in the order dated 08.11.2019 continued to hold the field.

72. In any event, the finding on priority does not rest solely, or even principally, on the DRT's order; it independently follows from the documentary chronology the NOC dated 10.09.2012, the Memorandum dated 16.01.2013, the No Due Certificate dated 20.03.2015 and the contemporaneous Simple Mortgage Deed read with Section 48 of the Transfer of Property Act, 1882, as discussed under Issue No. 2 above. The DRT order was relied upon only as independent corroboration and not as the foundation of the finding. The pendency of the review therefore furnishes no ground to disturb the impugned order.

Issue No. 4 is accordingly answered against the Appellant.

Issue No. 5: Whether the impugned order suffers from internal inconsistency in simultaneously including the Sigma-9 Property in the liquidation estate and declining to set aside the assignment deeds dated 27.10.2023 and dated 02.05.2025?

73. It is the case of the Appellant that the impugned order is self-contradictory in simultaneously (a) declaring the Sigma-9 Property part of the liquidation estate and permitting the Liquidator to take custody under Section 35 of the Code, and (b) declining to set aside the Assignment Agreements dated 27.10.2023 and 02.05.2025, which are said to remain subsisting and valid; and that unless the impugned order is set aside, the charges created by those assignment deeds would be rendered infructuous.

74. On examination, no such inconsistency exists. The impugned order does two analytically distinct things: first, it declines to invalidate the Assignment Agreements dated 27.10.2023 and 02.05.2025 as transactions inter se between BOM, Areion Finserve and Raj Radhe Finance and second, it separately holds that the security interest which those assignments purported to carry , being, on Issue No 2 above, a mortgage subordinate to the first charge of IDBI Bank and BOB, and, on the findings on Issue (iii) of the impugned order, never realised or even intimated for realisation within the thirty-day window prescribed by Regulation 21A(1) of the IBBI (Liquidation Process) Regulations, 2016 — stood deemed, by operation of the proviso to Regulation 21A(1) read with Regulation 21A(3), to have lapsed into the liquidation estate .

75. We observe that these findings can co-exist without any conflict. An assignment may be a perfectly valid transaction as between assignor and assignee, transferring whatever the assignor held, while what was transferred (here, a subordinate charge that its holders never elected, in time, to realise outside liquidation) is, independently and by force of Regulation 21A, treated as part of the estate. The assignees are not left without a valid transaction for that reason; what they are left without is a security interest enforceable outside liquidation. That is a statutory consequence of Regulation 21A, not an inconsistency internal to the impugned order.

76. The security assigned under the two deeds was always subordinate and always liable to lapse for want of timely election under Section 52 of the Code. The impugned order does no more than record the legal consequence that necessarily follows from those antecedent findings.

Issue No. 5 is accordingly answered against the Appellant.

Issue No. 6: Whether the dismissal of I.A. No. 1137(AHM)2025 and the directions in I.A. No. 525(AHM)2026 call for interference by this Appellate Tribunal?

77. It remains to consider whether the dismissal of I.A. No. 1137(AHM)2025 and the directions in I.A. No. 525(AHM)2026 call for interference, on the Ground that rejection of a claim does not extinguish a mortgage and that no prejudice was caused to the liquidation process by the delay in question.

78. We need to appreciate that IA No. 1137(AHM)2025 was preferred by Raj Radhe Finance Limited, as assignee of Areion Finserve, challenging the Liquidator's rejection of Areion Finserve's claim under Section 42 of the Code. Raj Radhe Finance, as assignee, could acquire no better title to press that claim than Areion Finserve itself possessed. The delay and non-compliance with Regulation 21A that justified rejection of Areion Finserve's claim equally infects the claim as pressed by its assignee. The dismissal of I.A. No. 1137(AHM)2025 calls for no interference, and, in any event, it is Respondent No. 8 who is directly bound by that dismissal; the Appellant does not, beyond what is already covered under Issue No 1 to 5 above, make out any independent ground of challenge to this part of the impugned order.

79. on the issue that rejection of a claim does not extinguish a mortgage, and that no prejudice was caused to the liquidation process by the delay, misconceives the basis of the finding. While rejection of a proof of claim does not, of itself and for all purposes, extinguish an underlying mortgage as a matter of general property law, the operative consequence here is not extinguishment of the mortgage in the abstract but the statutorily deemed consequence, under Regulation 21A(3) of the IBBI (Liquidation Process) Regulations, 2016, of failure to exercise the Section 52 option within the time prescribed. That consequence — the secured asset being brought into, and treated as part of, the liquidation estate follows by operation of the Regulation itself, and does not depend on demonstrated prejudice to the liquidation process, in the same manner that limitation bars a remedy irrespective of individualised prejudice.

80. The direction in I.A. No. 525(AHM)2026 for handing over of the original title deeds of the Sigma-9 Property to the Liquidator is the necessary corollary of the finding, affirmed above, that the property forms part of the liquidation estate and that the Liquidator is obliged, under Section 35(1)(b), (d) and (n) of the Code, to take custody and control of the assets and records of the Corporate Debtor. Custody of an immovable asset without custody of its title documents would render that statutory duty illusory. This direction, too, calls for no interference.

The Issue No. 6 is accordingly answered against the Appellant.

Conclusion

81. For the reasons recorded above, none of the grounds urged on behalf of the Appellant whether going to the jurisdiction of the Adjudicating Authority, to the priority of mortgages, to the effect of non-registration of charges under the Companies Act, 2013, to the pendency of the DRT review, or to the internal consistency of the impugned order is found to have merit. In the result, the impugned Order doesn't warrant any interference from this Appellate Tribunal.

82. The appeal fails and accordingly, dismissed. No order as to cost. Pending IA, if any stand closed.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Sim