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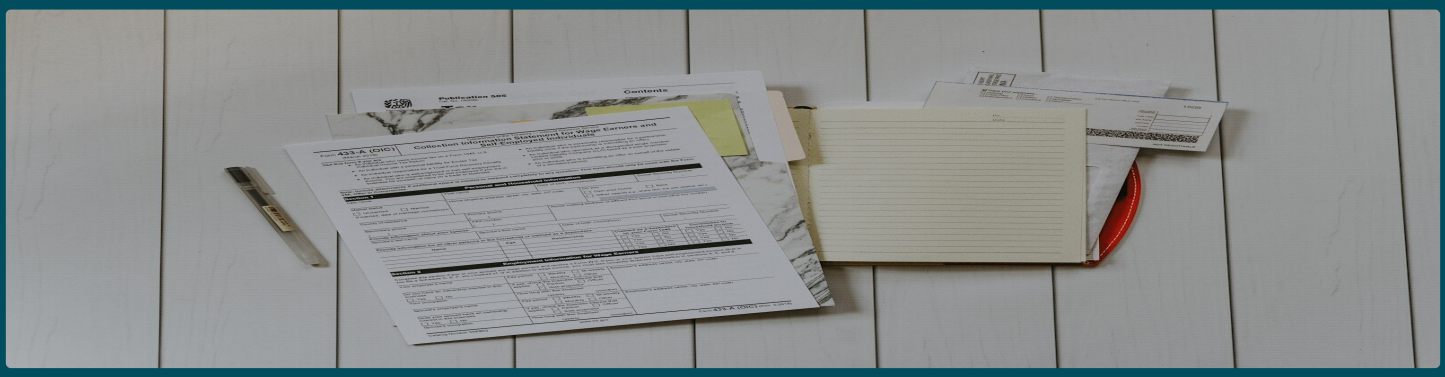

INSOLVENCY & BANKRUPTCY

Secured Creditor’s Failure to Disclose Security Interest in Form D: Lessons from Tata Capital Financial Services v. Sanjay Mahajan (Liquidator)

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The liquidation phase of the Insolvency and Bankruptcy Code, 2016 (IBC) imposes a structured regime upon secured creditors, requiring them to make timely and transparent elections regarding their security interests. The consequences of procedural non-compliance can be severe, as demonstrated by the National Company Law Tribunal (NCLT), Mumbai Bench, in its judgment dated 13 April 2026 in Tata Capital Financial Services Ltd. v. Sanjay Mahajan (Liquidator) [I.A. No.2828 of 2025 in C.P.(IB) No.3138/MB/2019], (2026) ibclaw.in 1081 NCLT. The Tribunal dismissed an application by a secured financial creditor seeking to exclude hypothecated equipment from the liquidation estate and take independent possession, holding that the creditor's defective disclosure in Form D, coupled with active participation in the liquidation process, extinguished its right to realise security outside the liquidation framework. This article examines the factual background, rival contentions, legal analysis, and the Tribunal's reasoning to distil the critical lessons for secured creditors navigating IBC liquidation.

Tata Capital Financial Services Limited, a Non-Banking Financial Company registered with the Reserve Bank of India, had sanctioned an Equipment Finance Facility of Rs. 1.50 Crore to Jans Copper Private Limited vide Sanction Letter dated 23 November 2018, secured by a Loan-cum-Hypothecation-cum-Guarantee Agreement dated 11 December 2018. The facility was subsequently modified by an Addendum dated 24 January 2019 and a Deed of Modification. Additionally, the Applicant sanctioned a Term Loan of Rs. 25.55 Lakhs under an Agreement dated 6 August 2020, secured by a Deed of Hypothecation dated 10 February 2021 creating a second charge on the same machinery. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process on 24 February 2023, and upon rejection of the resolution plan, liquidation commenced on 13 August 2024 with Mr. Sanjay Mahajan appointed as Liquidator.

The Applicant submitted its claim in Form D on 1 October 2024 for Rs. 1,93,41,426.26, disclosing the hypothecation deeds but stating the value of security held as "NIL" in Column 8. It was categorised as a secured financial creditor with 6.14% voting share in the Stakeholders' Consultation Committee (SCC), which also included Axis Bank Ltd. (75.80%), JMC Metals Private Limited (12.86%), Oswal Minerals Private Limited (4.77%), and the GST Department (0.43%). The SCC considered a Scheme of Compromise and Arrangement under Section 230 of the Companies Act, 2013, which was rejected by 86% voting share on 4 February 2025. Only thereafter, on 19 February 2025, did the Applicant email the Liquidator asserting its exclusive charge and demanding handover of the hypothecated equipment within 30 days for independent sale. The Liquidator rejected this request, prompting the present application under Section 60(5) read with Section 52(5) of the IBC and Rule 11 of the NCLT Rules.

The Applicant contended that its authorised representative had consistently maintained in SCC meetings that it would not relinquish its security interest and sought to remain outside the liquidation estate. It argued that the hypothecation was valid, that it had never relinquished its security interest, and that as a non-relinquishing secured creditor it was entitled to realise its security independently under Section 52 of the IBC. It further submitted that the Liquidator's rejection was arbitrary and that the Tribunal should exercise its inherent powers to direct exclusion of the assets from the liquidation estate.

The Liquidator resisted the application on multiple grounds. He pointed to the critical disclosure in Form D, Column 8, where the Applicant had declared the value of its security as "NIL," which was materially inconsistent with its current stance. He relied upon Regulation 21A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, which mandates that a secured creditor must inform the Liquidator of its decision to relinquish or realise its security interest within 30 days from the liquidation commencement date, failing which the assets shall be presumed part of the liquidation estate. He noted that the Applicant had actively participated in SCC meetings, exercised voting rights, and was present when custody of assets was taken on 18 December 2024 and when the valuation report was shared on 13 January 2025. He invoked the first proviso to Regulation 31A(2), which renders a secured creditor who has not relinquished its security interest ineligible for SCC membership, to argue that the Applicant's participation undermined its claim of independent realisation. He further submitted that even if the Applicant had opted to realise its security, it had failed to comply with Regulation 21A(2)'s payment obligations within 90 and 180 days, and that its delayed assertion after the Scheme's rejection was an afterthought motivated by extraneous considerations.

The Tribunal, after perusing the records and hearing both counsel, systematically dismantled the Applicant's case. It held that while the Applicant's status as a secured financial creditor was not disputed, the only material question was whether it could assert its right to realise security at this belated stage. The Tribunal examined Regulation 21A, which came into effect on 25 July 2019, and emphasised its categorical framework. A secured creditor must use Form C or Form D to intimate its election. The proviso to Regulation 21A(1) creates an irrebuttable presumption that assets form part of the liquidation estate if the creditor fails to intimate its decision within 30 days. Regulation 21A(2) imposes payment obligations on creditors who opt to realise, and Regulation 21A(3) provides that failure to comply results in the asset becoming part of the liquidation estate.

The Tribunal found that the Applicant's Form D contained a fatal inconsistency. At Serial No. 8, the value of security was stated as "NIL." At Serial No. 8A, inserted precisely to clarify whether security was relinquished or realised, the Applicant answered "No" to relinquishment. Read together, these entries conveyed that the Applicant had indicated no security to relinquish, which was incompatible with a claim of independent realisation. The Tribunal rejected the Applicant's reliance on oral assertions in SCC meetings, holding that mere verbal statements could not substitute for proper formal disclosure in the prescribed statutory form.

The Tribunal then invoked the first proviso to Regulation 31A(2), which disqualifies non-relinquishing secured creditors from SCC membership. The Applicant's continued participation in SCC meetings, its exercise of voting rights, and its failure to object to its inclusion were all treated as tacit acceptance of the liquidation process and the inclusion of its assets in the liquidation estate. The Tribunal found the Applicant's conduct during the taking of custody and its acceptance of the valuation report to be further inconsistent with a claim of exclusive security interest.

The timing of the Applicant's assertion was also held against it. The email dated 19 February 2025 was sent approximately six months after the liquidation commencement date and crucially only after the Scheme of Compromise and Arrangement had been rejected. The Tribunal inferred that the changed stance was opportunistic rather than reflective of a consistent legal position. Finally, the Tribunal noted the complete absence of compliance with Regulation 21A(2), under which the Applicant should have paid specified amounts to the Liquidator within 90 and 180 days. Under Regulation 21A(3), this failure alone rendered the assets part of the liquidation estate.

The Tribunal concluded that the Applicant's failure to clearly mention its intention to enforce security in Form D, its continued participation in SCC meetings without correcting its position, and its participation during the Liquidator's custody of assets disentitled it from exercising independent realisation rights at this juncture. Such a claim would undermine the entire liquidation process.

Accordingly, I.A. No. 2828 of 2025 was dismissed. The hypothecated equipment remained part of the liquidation estate.

The NCLT Mumbai Bench's decision in Tata Capital Financial Services v. Sanjay Mahajan highlights the uncompromising procedural rigour that the IBC's liquidation framework demands from secured creditors. The judgment establishes that statutory disclosure requirements, particularly in Form D, are not mere administrative formalities but constitute the foundational basis upon which secured creditor rights are determined during liquidation. It affirms that oral assertions, however consistent, cannot override defective formal disclosures. It clarifies that active participation in the SCC by a secured creditor who has not formally relinquished or elected to realise security creates an irreconcilable contradiction that courts will resolve against the creditor. For practitioners, this ruling serves as an urgent reminder that the 30-day window under Regulation 21A is absolute, that Form D must be completed with scrupulous accuracy in both Column 8 and the critical Serial No. 8A, and that any ambiguity in disclosure will be construed against the creditor seeking to disrupt the orderly liquidation process. The judgment reinforces that the IBC's liquidation architecture prioritises collective resolution over individual enforcement, and that secured creditors who fail to navigate its procedural contours with precision will find their security interests subsumed within the liquidation estate.

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