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Restructured Debt and the Survival of Registered Charges: NCLAT Affirms Secured Creditor Status in the Absence of Post-Restructuring ROC Modification

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The interplay between corporate debt restructuring, charge registration under company law, and the insolvency resolution framework has long presented complex jurisprudential challenges for Indian courts and tribunals. In a significant ruling delivered on 24 April 2026, the Principal Bench of the National Company Law Appellate Tribunal (NCLAT), addressed these very complexities through a common judgment disposing of three connected appeals. The appeals arose from the liquidation of Gupta Synthetics Ltd. and fundamentally questioned whether credit facilities restructured under Reserve Bank of India guidelines, without corresponding modification of charge registered with the Registrar of Companies, could nonetheless retain their secured status during liquidation proceedings under the Insolvency and Bankruptcy Code, 2016.

The factual matrix of the dispute traces its origins to 2004, when ING Vysya Bank Ltd. (which subsequently merged with Kotak Mahindra Bank Ltd.), Bank of Baroda, and Oriental Bank of Commerce extended credit facilities to Gupta Synthetics Ltd., the corporate debtor. Over time, the lending consortium expanded to include Standard Chartered Bank, IDBI Bank Ltd., State Bank of India, and State Bank of Saurashtra, even as Bank of Baroda exited the arrangement. The consortium lending was secured through a comprehensive security package, culminating in a joint deed of hypothecation and a supplemental memorandum of deposit of title deeds executed on 26 March 2008, which created a first Pari-Pasu charge over the immovable and movable assets of the corporate debtor. IDBI Bank had separately sanctioned a term loan of ?17.60 crores in June 2006 and working capital facilities of ?10 crores in July 2006, with its charge registered with the Registrar of Companies in 2007 and modified in 2008. Similarly, SBI had sanctioned facilities aggregating to ?18.35 crores in 2004, enhanced subsequently to ?38.90 crores, with State Bank of Saurashtra contributing an additional ?7.45 crores before its merger with SBI in 2008; the charge in favour of SBI was last modified and registered in 2008.

The financial trajectory of the corporate debtor deteriorated, prompting all consortium lenders to restructure their respective exposures between 2009 and 2010. Kotak Mahindra Bank restructured its facilities through a sanction letter dated 21 July 2009, carving out a Term Loan-III from existing short-term liabilities, cash credit balances, and unpaid interest. IDBI Bank restructured the repayment schedule in March 2009, though it later revoked the restructuring and recalled the facilities. SBI restructured its exposure through a sanction letter dated 21 April 2010, bifurcating the debt into a Working Capital Term Loan of ?12.16 crores, Funded Interest Term Loan-I of ?1.09 crores, FITL-II of ?3.03 crores, and FITL-III of ?2.70 crores, inclusive of the erstwhile State Bank of Saurashtra facility of ?9.14 crores. A critical feature common to all these restructurings was that no consortium lender executed fresh security documents or filed any modification of charge with the Registrar of Companies after the restructuring.

Prior to the commencement of insolvency proceedings, Kotak Mahindra Bank had pursued enforcement through the Debts Recovery Tribunal, Mumbai, culminating in consent terms dated 22 December 2016, which were taken on record by the DRT in its order dated 10 January 2017. IDBI Bank had issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and had also filed an original application before the DRT. Kotak had additionally initiated Company Petition No. 184 of 2016 before the Bombay High Court under the Companies Act, 1956. The corporate debtor’s financial distress eventually led to the transfer of the company petition to the National Company Law Tribunal, Mumbai, which admitted it on 17 September 2019 and appointed Ms. Jovita Reema Mathias as the Interim Resolution Professional. The corporate insolvency resolution process failed, resulting in a liquidation order on 14 July 2020, with Ms. Mathias continuing as the liquidator.

Upon publication of the public notice dated 17 July 2020, the consortium lenders filed their respective claims. IDBI Bank claimed ?197.61 crores, which the liquidator largely classified as secured. SBI claimed approximately ?196 crores, comprising principal of ?42 crores and interest of ?153 crores; the liquidator initially treated only ?47 crores pertaining to the cash credit facility as secured and classified the remaining ?148 crores as unsecured. Kotak Mahindra Bank lodged an aggregate claim of approximately ?1,420 crores, with the liquidator initially classifying only ?707,571,789 as secured and ?712,916,236 as unsecured. However, following extensive correspondence and reliance upon the DRT consent terms, the liquidator revised Kotak’s classification and treated the entire claim as secured. The liquidator also distributed an insurance claim of ?6.424 crores received for fire damage at the factory premises among the consortium lenders, and sold the corporate debtor’s assets for an aggregate consideration of ?34.65 crores during November and December 2020.

The divergent classifications triggered three distinct proceedings before the National Company Law Tribunal, Mumbai. IDBI Bank filed Interlocutory Application No. 852 of 2021 under Section 42 of the Insolvency and Bankruptcy Code, assailing the liquidator’s revised classification of Kotak’s claim as secured and alleging preferential treatment. By an impugned order dated 21 November 2023, the NCLT allowed IDBI’s application, holding that Kotak’s classification as a secured creditor was incorrect because the restructuring did not create fresh security, and directed a redistribution of sale proceeds. In parallel, SBI had filed IA No. 2228 of

2020 seeking a direction to treat its entire claim of ?196 crores as secured. By an impugned order of the same date, the NCLT allowed SBI's application, holding that restructuring in the strict sense may not amount to modification of charge requiring fresh registration, and that under Regulation 21 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, SBI could prove its security interest through its CERSAI registration. The NCLT directed the liquidator to verify SBI's charge with CERSAI and treat the entire claim as secured, further directing an offset of insurance claim amounts. Separately, Kotak had filed IA No. 1111 of 2023 seeking distribution of sale proceeds under Sections 77 and 79 of the Companies Act, 2013, which the NCLT dismissed as infructuous by an order dated 20 December 2023 in view of its earlier order in SBI's application.

Aggrieved by all three NCLT orders, Kotak Mahindra Bank filed the present appeals before the NCLAT. The appellant contended that Sections 77 and 79 of the Companies Act, 2013 impose a mandatory duty to register charges and their modifications, and that Section 77(3) explicitly bars a liquidator from taking into account any charge not duly registered with the Registrar of Companies. It was argued that the restructuring of 2009-2010 constituted a material modification of the original charge, necessitating fresh registration, and that the failure to do so rendered the restructured facilities unsecured. Kotak further submitted that Section 238 of the Insolvency and Bankruptcy Code, being a non-obstante provision, did not assist the respondents, and that the amendment to Section 77(3) through Section 255 of the Code was consciously designed to bind liquidators to the registration requirement. Reliance was placed upon Kerala State Financial Enterprises Ltd. v. Official Liquidator, Indian Bank v. Official Liquidator, Chemmeens Exports Pvt. Ltd., Raghunath Rai Bareja v. Punjab National Bank, and State Bank of India v. Varun Roshan Kohli to buttress the argument that a DRT decree creates security interest and that restructuring substitutes the original charge. Kotak also invoked Sections 23, 24 and 26-D of the SARFAESI Act to argue that CERSAI registration could not cure the defect of non-registration with the Registrar of Companies, and asserted that Regulation 21 of the Liquidation Regulations, being subordinate legislation, could not override the mandatory statutory mandate of the Companies Act.

The respondents advanced diametrically opposed submissions. IDBI Bank argued that the original charge created in 2006 and last modified in 2008 continued to subsist, and that the restructuring merely recategorized existing debt without altering the terms, conditions, or extent of the charge. It was submitted that Regulation 21 of the Liquidation Regulations consciously provides three alternative modes for proving security interest records in an information utility, certificate of registration from the Registrar of Companies, or proof of registration with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India and that the disjunctive use of the word "or" permits proof through any one of these modes independently. IDBI relied upon the principle of liberal construction and cited State of Punjab v. Grindlays Bank to contend that non-registration of modification does not extinguish an originally registered charge. SBI adopted similar arguments, emphasizing that the 2010 restructuring was merely an RBI-mandated recategorization of existing principal and interest into differently named facilities, with no fresh advance of money. SBI relied upon CERSAI registration to prove its security interest and cited Bizloan Pvt. Ltd. v. Amit Chandrashekhar Poddar and Brihan Mumbai Electricity Supply and Transport Undertaking v. Ashok Kumar Golecha in support of the proposition that Regulation 21 overrides the rigours of Section 77(3) in liquidation proceedings. SBI further argued that even if the restructured facility were treated as distinct, the original 2008 charge would automatically revive to secure the original principal and accrued interest. The liquidator, for her part, maintained that she had acted strictly within the statutory framework, classifying claims based on objective documentary evidence without exercising any independent adjudicatory function, and that the dispute essentially concerned inter se priority among financial creditors.

The NCLAT framed the adjudication around five critical issues: whether restructuring of credit facilities amounts to modification of charge under Section 79(b) of the Companies Act, 2013; whether Regulation 21 of the Liquidation Regulations overrides Section 77(3) of the Companies Act; whether a DRT consent decree creates fresh security interest or remains subordinate to existing registered charges; whether CERSAI registration is sufficient proof of security interest in liquidation; and whether the NCLT had erred in its classification orders.

In its analysis, the appellate tribunal first examined the true nature of the restructuring undertaken by the consortium lenders. Upon perusal of the sanction letters and restructuring documents, the NCLAT observed that the restructured facilities whether designated as Working Capital Term Loan or Funded Interest Term Loans were not fresh advances but merely arose from the existing cash credit and term loan facilities. The restructuring involved funding unpaid interest and converting overdue portions of working capital into term loans, a process the tribunal characterised as recapitalisation designed to assist the corporate debtor in overcoming financial stress. The tribunal noted that although the sanctioned limit indicated an increase, the restructuring package simultaneously involved sacrifices of an equivalent amount to be shown as contingent liability. Consequently, the NCLAT held that no material modification in the terms, conditions, or extent of operation of the original charge had occurred

merely because the overdue amounts had been designated differently. The securities remained identical, and the overall secured amount had not been enhanced beyond the coverage of the originally registered charge.

Addressing the contentious interplay between Section 77(3) of the Companies Act and Regulation 21 of the Liquidation Regulations, the NCLAT adopted the harmonious construction propounded by a co-ordinate bench in Bizloan Pvt. Ltd. v. Amit Chandrashekhar Poddar. The tribunal recognised that Section 77(3) serves the distinct purpose of public notice and priority through registration with the Registrar of Companies, whereas Regulation 21 governs the procedural mechanism for proving security interest during liquidation under the Code. The NCLAT emphasised that Regulation 21, which came into force on 15 December 2016, is later in time than the amendment to Section 77(3) effected on 15 November 2016 through Section 255 of the Code. Applying the principle that the later enacted law prevails over the earlier one, and keeping in view that the Insolvency and Bankruptcy Code is a special law and self-contained code for insolvency matters, the tribunal held that Regulation 21 provides three independent and alternative modes for establishing security interest. The disjunctive use of the word “or” between sub-clauses (b) and (c) of Regulation 21 makes it clear that a secured creditor may prove its interest either through an ROC certificate or through CERSAI registration. The tribunal further noted that Section 20 of the SARFAESI Act establishes the Central Registry for preventing fraud and alerting lenders, and that the non-obstante clauses in the Companies Act, the SARFAESI Act, and the Code must be read harmoniously in the specific context of liquidation, where the Code’s specialised framework must prevail.

The NCLAT then turned to Kotak’s reliance upon the DRT consent terms and decree. The tribunal observed that the consent terms were executed between Kotak, the corporate debtor, and its guarantors, and were not the product of an adversarial adjudication. Crucially, the consent terms explicitly referenced the fourth supplemental joint deed of hypothecation dated 26 March 2008 and the second supplemental memorandum of deposit of title deeds, thereby acknowledging the existing security framework. The terms further revealed that Kotak held only a second Pari-Pasu charge over the FDY plant and the DT and D-Tax plant, expressly recognising SBI’s first charge over the FDY plant and IDBI’s first charge over the DT and D-Tax unit. The tribunal held that such a consent decree could not be construed as creating a fresh first charge in Kotak’s favour over assets already secured in favour of other creditors. The DRT order was therefore subordinate to the existing registered charges and could not displace the inter se priority established in 2008.

Regarding precedents, the NCLAT distinguished Kotak’s reliance upon Indian Bank v. Official Liquidator, Chemmeens Exports Pvt. Ltd. on the ground that the Supreme Court’s pronouncement predated the enactment of the Insolvency and Bankruptcy Code in 2016. The tribunal also distinguished Volkswagen Finance Pvt. Ltd. v. Shree Balaji Printopack Pvt. Ltd., Axis Bank Ltd. v. Value Infracon India Pvt. Ltd., and Unity Small Finance Bank Ltd. v. Privilege Industries Ltd., noting that in each of those cases, no charge had ever been registered with the Registrar of Companies. The present case, by contrast, involved a duly registered original charge from 2008; the dispute concerned only the alleged necessity of registering subsequent modifications arising from restructuring. The tribunal found this factual distinction to be decisive.

The NCLAT also emphasised the element of inter-lender equity. The record demonstrated that all consortium lenders were fully aware of the extent of facilities extended by each member bank and the specific charges created therefor. The restructuring was undertaken collectively and with mutual knowledge. In such circumstances, the tribunal held that construing the term “modification” liberally in favour of the lenders would not prejudice the security interest of any existing creditor, since the securities had remained unchanged and the priority structure was known to all parties from the outset.

In its final decision, the NCLAT dismissed all three appeals filed by Kotak Mahindra Bank. The tribunal upheld the NCLT’s order in IA No. 852 of 2021, affirming that Kotak’s classification as a secured creditor to the extent of its restructured facilities was not sustainable in the face of the original 2008 charge framework and the absence of fresh security creation. It upheld the NCLT’s order in IA No. 2228 of 2020, confirming that SBI’s entire claim of ?196 crores was properly classified as secured based on its CERSAI registration and the continuing validity of the 2008 charge. The dismissal of Kotak’s application in IA No. 1111 of 2023 as infructuous was also affirmed. The tribunal made no order as to costs and disposed of all pending applications.

This judgment carries implications for the practice of insolvency law and consortium lending in India. It establishes that restructuring undertaken pursuant to regulatory guidelines, which merely re-categorises existing debt without altering the underlying security package, does not trigger the mandatory modification requirement under Section 79(b) of the Companies Act, 2013. It affirms the autonomous operation of Regulation 21 of the IBBI Liquidation Regulations as a specialised proof-of-claim mechanism within the insolvency framework, permitting secured creditors to establish their interest through CERSAI registration even in the absence of post-restructuring ROC filings. By harmonising the Companies Act, the SARFAESI Act, and the Insolvency and Bankruptcy Code, the NCLAT has reinforced the principle that the insolvency process, being a self-contained

special law, must be interpreted in a manner that preserves inter-creditor equity and avoids hyper-technical forfeiture of legitimate security interests. The ruling serves as a definitive precedent for liquidators, financial creditors, and resolution professionals navigating the complex interface between corporate restructuring and insolvency resolution.

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