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TREATMENT OF DUAL CAPACITY CREDITORS AND COMMON SECURITY REALISATION IN LIQUIDATION UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

~ Ryan Bang, Ankit Singh & Aviral Singhai

ABSTRACT

The Insolvency and Bankruptcy Code, 2016, has significantly reformed corporate debt recovery in India. A recurring challenge concerns the dual-capacity creditor, an entity that provides both financial loans and operational services to a single company, often securing both exposures with one shared asset. When a company enters liquidation, the law requires these hybrid claims to be conceptually split. This paper examines whether a dual-capacity creditor can legally enforce a common security to recover both debts outside of the collective liquidation process. By analysing sections 52 and 53 of the Code alongside recent judicial developments, the paper outlines the strategic risks and statutory limits facing these creditors. Relinquishing the security guarantees high repayment priority for both claims, while independent realisation is heavily restricted by a mandatory sixty per cent majority threshold. Furthermore, recent rulings granting secured status to statutory operational creditors have created new conflicts over shared assets. The paper concludes that independent realisation carries serious financial risks, any unrecovered debt is sharply demoted in priority, and offers practical recommendations for structuring future credit agreements to navigate this framework.

INTRODUCTION

The enactment of the Insolvency and Bankruptcy Code, 2016 (hereinafter “Code”),¹ represents a watershed moment in the Indian corporate insolvency and restructuring landscape. Designed to consolidate and amend a historically fragmented body of law governing the reorganisation and insolvency resolution of corporate persons, partnership firms, and individuals, the Code fundamentally prioritises maximising asset value, promoting entrepreneurship, and delicately balancing stakeholder interests within a strictly time-bound procedural framework. By transitioning control of a defaulting corporate debtor from its existing management to an independent insolvency professional acting under the aegis of a Committee of Creditors (hereinafter “CoC”), the legislation attempts to foster a predictable and commercially viable environment for debt recovery and corporate rescue. Central to the architecture of this insolvency regime is the classification of creditors into distinct legal categories, most prominently “Financial Creditors” and “Operational Creditors”, a structural classification that dictates their statutory rights, voting privileges, and ultimate positions within both the Corporate Insolvency Resolution Process and the liquidation distribution waterfall.

The complexities of modern corporate finance frequently give rise to hybrid commercial relationships that defy the rigid, binary categorisation initially contemplated by the legislature. A legally intricate issue in this domain is the emergence of the “dual-capacity creditor.” This term refers to an entity that engages with a corporate debtor in multiple commercial dimensions, supplying both capital financing (resulting in financial debt) and essential goods or services (resulting in operational debt) to a single corporate entity. The practical situation becomes considerably more complex when this dual-capacity creditor holds a “common security”, a single, indivisible security interest over the corporate debtor's assets to secure both the financial and the operational exposures simultaneously.

When a corporate debtor crosses the threshold from a failed resolution process into formal liquidation, the rights, remedies, and priorities of secured creditors are strictly governed by sections 52 and 53 of the Code. A secured creditor may either relinquish its security interest to the collective liquidation estate or stand outside those proceedings and realise its security independently. This paper examines whether a creditor with dual status, acting concurrently as a Secured Financial Creditor and a Secured Operational Creditor, can legally rely on the same common security in liquidation, and on what terms. It argues that while the Code does not

¹ Insolvency and Bankruptcy Code 2016 (Act 31 of 2016).

prohibit cross-collateralisation, the sixty per cent majority rule drawn from the SARFAESI Act, the mandatory claim-splitting obligation under section 21(4), and the punitive waterfall demotion for realisation shortfalls together impose a coherent set of constraints that favour relinquishment over independent enforcement in most practical scenarios.

CLASSIFYING DEBTS AND CREDITORS

To deconstruct the rights and limitations of a dual-capacity creditor during liquidation, it is necessary first to examine how the Code defines, differentiates, and treats debts, creditors, and security interests. The entire framework rests on these foundational distinctions, and misreading them produces errors in asset distribution that no subsequent judicial correction can fully remedy.

The legislative framework begins with a broad definition of liability. Section 3(11) of the Code defines a “debt” as a liability or obligation in respect of a claim which is due from any person, encompassing both financial and operational debt within its scope.² The concept of “Financial Debt” is then governed by section 5(8).³ A financial debt is fundamentally characterised as a debt disbursed against the consideration for the “time value of money”. The Supreme Court, in *Swiss Ribbons (P) Ltd v Union of India*⁴ and *Pioneer Urban Land and Infrastructure Ltd v Union of India*⁵, has emphasised that the essence of a financial debt lies not merely in the advancing of funds but in the commercial effect of borrowing. The transaction must demonstrate that funds were transferred with the explicit expectation of repayment of principal with accrued interest, reflecting the time value of the disbursed capital.

Financial creditors, as capital providers, are entrusted with primary decision-making authority within the CoC during the resolution phase, reflecting the legislative assumption that they are best placed to assess the commercial viability of restructuring.

“Operational Debt” is defined under section 5(21) of the Code.⁶ An operational debt constitutes a claim in respect of the provision of goods or services, explicitly including employment dues, or a debt in respect of the payment of statutory dues arising under any law for the time being in force and payable to the Central Government, any State Government, or any local authority. Operational creditors are typically suppliers, vendors, employees, and statutory authorities.

² Insolvency and Bankruptcy Code 2016, s 3(11).

³ Insolvency and Bankruptcy Code 2016, s 5(8).

⁴ *Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17.

⁵ *Pioneer Urban Land and Infrastructure Ltd v Union of India* (2019) 8 SCC 416.

⁶ Insolvency and Bankruptcy Code 2016, s 5(21).

Their relationship with the corporate debtor is transactional and functional rather than capital-intensive. While they possess the right to initiate insolvency proceedings upon a qualifying default, their role in the governance of the resolution process is severely restricted, they generally do not have voting rights in the CoC unless their aggregate dues constitute ten per cent or more of the total debt, and even then, their participation is often limited to observation.⁷

Complex commercial arrangements frequently test the boundary between these two classifications. The Supreme Court's decision in *Global Credit Capital Ltd v Sach Marketing Pvt Ltd*⁸ illustrates how a single agreement can generate dual capacities. In that case, a party appointed as a "Sales Promoter" under a service agreement, a relationship that classically generates operational debt, had also provided substantial security deposits to the corporate debtor, accruing interest at 21 per cent per annum. The Court, looking to the substance rather than the label of the transaction, held that the deposits bore the unmistakable commercial effect of borrowing and therefore constituted financial debt. Because the deposits accrued significant interest and lacked forfeiture clauses typically associated with performance guarantees, the financial component of the arrangement overshadowed the operational element, granting the creditor financial status for that portion of the claim. The decision confirms that a single commercial relationship can simultaneously embed financial and operational debt, and that courts will look through contractual nomenclature to identify the true character of each component.⁹

THE SECURED CREDITOR AND THE CREATION OF SECURITY INTERESTS

Whether a creditor is secured or unsecured is the single most consequential fact in liquidation. It determines their position within the distribution hierarchy and their capacity to step outside the collective process.

Section 3(30) of the Code defines a "secured creditor" as any creditor in whose favour a security interest is created.¹⁰ Section 3(31) defines "security interest" to mean a right, title, interest, or claim in property created in favour of a secured creditor by a transaction that secures payment or performance of an obligation, encompassing mortgages, charges, hypothecations, assignments, and encumbrances.¹¹ For such an interest to be enforceable against a liquidator,

⁷ Insolvency and Bankruptcy Code 2016, ss 24(3)(c) and 24(4).

⁸ *Global Credit Capital Ltd v Sach Marketing Pvt Ltd* (2024) 9 SCC 482.

⁹ Ibid.

¹⁰ Insolvency and Bankruptcy Code 2016, s 3(30).

¹¹ Insolvency and Bankruptcy Code 2016, s 3(31).

it must ordinarily be registered under section 77 of the Companies Act, 2013.¹² A charge that is not registered is void against the liquidator, leaving the creditor to rank only as unsecured. This registration requirement operates as a public notice mechanism and is a precondition that cannot be overlooked in any structuring exercise.

A significant jurisprudential development in recent years has been the judicial recognition of the “Secured Operational Creditor.” Courts have accepted that statutory charges created by operation of law, and arbitral awards granting liens over supplied equipment, elevate operational creditors to secured status.¹³ This elevation creates a scenario in which an operational creditor, holding a statutory or arbitral lien, suddenly finds itself competing directly with banks and financial institutions holding contractual mortgages over the same corporate assets.

Statutory Recognition of Dual-Capacity Creditors: Section 21(4)

The Code explicitly recognises that a single entity may simultaneously hold financial and operational debt against the same corporate debtor. The legislature recognised that forcing a hybrid creditor into a single, restrictive category would distort the voting dynamics of the resolution process and produce inequitable distribution outcomes.

Section 21(4) of the Code is the definitive statutory anchor. It provides: “(4) Where any person is a financial creditor as well as an operational creditor, (a) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor;¹⁴ (b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.¹⁵

This provision mandates a “splitting” of the creditor’s total claim. The law does not treat the dual-capacity creditor as a unified monolith. Even where both the financial loan and the operational trade receivables arise from interconnected contracts, the interim resolution professional, the resolution professional, and the liquidator must mathematically and legally sever the claims, treating the financial and operational portions as distinct debts subject to their respective statutory treatments, voting rights, and waterfall priorities. The rationale is clear: an

¹² Companies Act 2013 (Act 18 of 2013), s 77.

¹³ *Srikanth Dwarakanath, Liquidator of Surana Power Ltd v Bharat Heavy Electricals Ltd*, Company Appeal (AT) (Insolvency) No 1510 of 2019 (NCLAT, 18 June 2020).

¹⁴ Insolvency and Bankruptcy Code 2016, s 21(4)(a).

¹⁵ Insolvency and Bankruptcy Code 2016, s 21(4)(b).

entity's governance rights in corporate restructuring must correspond to its capital exposure, not be inflated by operational dues that carry a different commercial risk profile.

Although section 21(4) is expressed in the context of the CoC and the resolution phase, the conceptual segregation of claims persists into liquidation. Read alongside section 53, the provision shapes how the liquidator must assess and admit each component of the dual-capacity creditor's claim in the distribution process.

The Liquidation Waterfall

Section 53 of the Code establishes the hierarchy for distributing the proceeds of the liquidation estate.¹⁶ The positioning of Secured Financial Creditors and Secured Operational Creditors within this waterfall is of profound legal significance and has generated extensive litigation. The cascade mechanism operates on a simple principle: each tier is satisfied only to the extent that surplus proceeds survive after full payment to higher tiers. The statutory hierarchy is as follows:

Priority Level	Statutory Section	Class of Creditor and Description of Dues
First Tier	Section 53(1)(a)	Insolvency resolution process costs and liquidation costs, paid in full. ¹⁷
Second Tier (Pari Passu)	Section 53(1)(b)	(i) Workmen's dues for 24 months preceding the liquidation commencement date. ¹⁸ (ii) Debts owed to a Secured Creditor who has relinquished its security interest to the liquidation estate. ¹⁹
Third Tier	Section 53(1)(c)	Wages and unpaid dues owed to employees (other than workmen) for 12 months preceding the liquidation commencement date. ²⁰
Fourth Tier	Section 53(1)(d)	Financial debts owed to Unsecured Creditors. ²¹

¹⁶ Insolvency and Bankruptcy Code 2016, s 53.

¹⁷ Insolvency and Bankruptcy Code 2016, s 53(1)(a).

¹⁸ Insolvency and Bankruptcy Code 2016, s 53(1)(b)(i).

¹⁹ Insolvency and Bankruptcy Code 2016, s 53(1)(b)(ii).

²⁰ Insolvency and Bankruptcy Code 2016, s 53(1)(c).

²¹ Insolvency and Bankruptcy Code 2016, s 53(1)(d).

Priority Level	Statutory Section	Class of Creditor and Description of Dues
Fifth Tier (Pari Passu)	Section 53(1)(e)	(i) Any amount due to the Central and State Governments for the preceding two years. ²² (ii) Debts owed to a Secured Creditor for any amount unpaid following the enforcement of its security interest (the realisation shortfall). ²³
Sixth Tier	Section 53(1)(f)	Any remaining debts and dues, including all Unsecured Operational Creditors. ²⁴
Seventh Tier	Section 53(1)(g)	Preference shareholders, if any. ²⁵
Eighth Tier	Section 53(1)(h)	Equity shareholders or partners. ²⁶

Equivalency of Financial and Operational Security in Relinquishment

Section 53(1)(b)(ii) refers to “debts owed to a secured creditor”²⁷ without qualifying language that distinguishes between a secured financial creditor and a secured operational creditor. If a dual-capacity creditor relinquishes its common security to the liquidation estate, both the financial claim and the operational claim, provided the common security validly secures both, rank strictly *pari passu* at the second tier alongside workmen’s dues. The historical distinction between the operational and financial origins of the debt dissolves into the unified status of a “relinquished secured claim.” This is the most significant strategic advantage of relinquishment: both components of the split claim receive identical priority treatment.

There is, however, a structural anomaly worth noting between how secured claims are treated in resolution and in liquidation, one that directly shapes the strategic calculations of a dual-capacity creditor.

²² Insolvency and Bankruptcy Code 2016, s 53(1)(e)(i).

²³ Insolvency and Bankruptcy Code 2016, s 53(1)(e)(ii).

²⁴ Insolvency and Bankruptcy Code 2016, s 53(1)(f).

²⁵ Insolvency and Bankruptcy Code 2016, s 53(1)(g).

²⁶ Insolvency and Bankruptcy Code 2016, s 53(1)(h).

²⁷ Insolvency and Bankruptcy Code 2016, s 53(1)(b)(ii).

Under section 30(2)(b) of the Code,²⁸ which governs the approval of resolution plans, an operational creditor is statutorily entitled to a minimum payment equal to the higher of two metrics: the amount it would receive in liquidation under section 53, or the amount it would receive if the resolution plan value were hypothetically distributed in accordance with the section 53 hierarchy.²⁹ Dissenting financial creditors, by contrast, are confined to their liquidation entitlement under section 53, regardless of a higher plan value.

In *Greater Noida Industrial Development Authority v Prabhjit Singh Soni*³⁰, the Supreme Court discussed this disparity in the context of section 30(2)(b) minimum entitlement formula. To illustrate the resulting difference in treatment, consider the following hypothetical, drawn from the Court's reasoning: assume a resolution plan value of Rs 500 crores, a liquidation value of Rs 300 crores, and identical admitted dues of Rs 400 crores for two secured creditors.

Creditor Classification	Admitted Dues	Minimum Entitlement Formula per Section 30(2)(b)	Resultant Minimum Entitlement
Secured Operational Creditor	Rs 400 Crores	Higher of: (Plan Value 500 ÷ 2) OR (Liquidation Value 300 ÷ 2)	Rs 250 Crores
Secured Financial Creditor	Rs 400 Crores	Strictly tied to Liquidation Value: (300 ÷ 2)	Rs 150 Crores

This hypothetical shows a curious feature of the current framework: while a dual-capacity creditor enjoys complete parity for both its split claims during formal liquidation under section 53, the operational fraction of its secured claim may yield a substantially higher minimum guarantee than its financial fraction in a successful resolution. Once liquidation commences, however, this disparity falls away, and the focus shifts entirely to the mechanics of section 52.

²⁸ Insolvency and Bankruptcy Code 2016, s 30(2)(b).

²⁹ Insolvency and Bankruptcy Code 2016, s 53.

³⁰ *Greater Noida Industrial Development Authority v Prabhjit Singh Soni* (2024) SCC OnLine SC 122.

Upon the formal commencement of liquidation under section 33 of the Code,³¹ the broad moratorium previously imposed under section 14 ceases to have effect.³² In its place, section 33(5) institutes a narrower protection, preventing the initiation of new legal proceedings by or against the corporate debtor.³³ Section 52 then carves out an important, though heavily regulated, exception for secured creditors.

A secured creditor in liquidation is presented with a binary statutory election: it may relinquish its security interest to the collective liquidation estate and receive proceeds distributed in accordance with section 53 waterfall; or it may realise its security independently, removing the encumbered asset from the estate and enforcing it under the applicable law.

The procedural timeline for this election is strict. Under Regulation 21A of the IBBI (Liquidation Process) Regulations,³⁴ the secured creditor must intimate the liquidator of its decision within 30 days of the liquidation commencement date. Failure to do so triggers a statutory presumption that the security is relinquished to the liquidation estate.³⁵ This ensures that the liquidator is not left waiting indefinitely while secured creditors make their strategic assessment.

Where a creditor elects to realise, it may enforce the secured asset in accordance with the applicable law, the SARFAESI Act,³⁶ for instance, in the case of banks. The realising creditor must contribute its proportionate share of insolvency resolution and liquidation costs. If the realisation generates surplus proceeds above the admitted secured debt, the excess must be tendered to the liquidator under section 52(7).³⁷ If it generates a shortfall, the unpaid portion falls to section 53(1)(e)(ii), the fifth tier, where it ranks alongside government statutory dues. This punitive demotion is designed to encourage relinquishment and collective asset maximisation over fragmented individual enforcement.

³¹ Insolvency and Bankruptcy Code 2016, s 33.

³² Insolvency and Bankruptcy Code 2016, s 14(4).

³³ Insolvency and Bankruptcy Code 2016, s 33(5).

³⁴ Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016, reg 21A (1).

³⁵ Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016, reg 21A (1) proviso.

³⁶ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.

³⁷ Insolvency and Bankruptcy Code 2016, s 52(7).

THE CONUNDRUM OF COMMON SECURITY IN DUAL-CAPACITY SCENARIOS

Having established the liquidation framework, the central question can now be addressed directly: can a creditor with dual capacity legally use the same security for both its financial and operational debts in liquidation?

From the perspective of property law and contract, nothing in the Code prohibits a single asset or pool of assets from being hypothecated, mortgaged, or charged to secure multiple distinct obligations simultaneously. Cross-collateralisation of this kind is a routine feature of sophisticated corporate finance, typically achieved by drafting a comprehensive Common Security Agreement or by appointing a Common Security Trustee to hold the charge on behalf of various exposure classes.

Consider a practical scenario. A corporate entity advances a term loan to a corporate debtor (generating financial debt) while simultaneously acting as its exclusive provider of maintenance services and raw materials (generating operational debt). The debtor executes a hypothecation deed creating a first-ranking charge over its entire plant and machinery, expressed to secure all present and future obligations owed to that creditor without distinguishing between loan repayments and trade receivables. In this scenario, the security interest legally covers both classes of debt. The Code does not invalidate such an arrangement.

The creditor is therefore simultaneously a Secured Financial Creditor for the outstanding loan and a Secured Operational Creditor for the unpaid service dues, with both split claims backed by the same physical asset. The IBC's mandate under section 21(4) to split these claims into distinct legal categories remains operative in liquidation.³⁸ The creditor cannot submit a single, unified "hybrid claim"; it must present two separately assessed claims to the liquidator.

If the dual-capacity creditor opts to relinquish the common security under section 52(1)(a), the asset passes to the liquidator for sale, and the proceeds enter the liquidation estate. The creditor then submits two distinct claims under section 53(1)(b)(ii), one as Secured Financial Creditor and one as Secured Operational Creditor. Since both claims fall at the second priority tier, the financial and operational distinction becomes practically irrelevant in a relinquishment scenario: the creditor receives a proportionate distribution that satisfies portions of both exposures alongside other relinquishing secured creditors and workmen's dues. The complexity arises only when the creditor opts to realise the common security independently.

³⁸ Insolvency and Bankruptcy Code 2016, s 21(4).

Realising Common Security: The Sixty Per Cent Threshold

The right to unilaterally remove an asset from the liquidation estate and realise a common security interest under section 52 is not absolute. Where a corporate asset is subject to a shared security interest, whether held by multiple creditors in a consortium or held by a single dual-capacity creditor whose claims place it alongside other secured lenders with *pari passu* charges, the majority value rule governs. This was definitively established in *Srikanth Dwarakanath, Liquidator of Surana Power Ltd v Bharat Heavy Electricals Ltd*.³⁹

Surana Power Limited had been ordered into liquidation following a failed resolution process. A consortium of ten secured financial creditors held a common security interest in the debtor's assets and collectively accounted for 73.76 per cent of the total secured debt. Bharat Heavy Electricals Limited (BHEL), which had supplied critical equipment to the debtor and obtained an arbitral award granting it a lien over those goods, was recognised as a Secured Operational Creditor holding 26.24 per cent of the secured debt on the same assets.

When liquidation commenced, the ten financial creditors relinquished their security interests to the estate. BHEL refused, insisting on its right to enforce its lien independently under section 52(1)(b). This created a practical deadlock: the liquidator could not proceed with a clean slump sale of the assets because BHEL's unresolved lien remained attached, deterring prospective buyers. The NCLT initially ruled in BHEL's favour, holding that an individual secured creditor's enforcement right under section 52 is unqualified and cannot be subordinated to the majority decision of other secured creditors.

The NCLAT overturned that ruling. It held that the IBC cannot operate in a legal vacuum and must be harmonised with broader debt recovery frameworks. Drawing on section 13(9) of the SARFAESI Act, which provides that where financial assets are secured by multiple creditors, enforcement rights may be exercised only with the agreement of secured creditors representing at least sixty per cent in value of the outstanding amount secured by the asset,⁴⁰ the NCLAT held that BHEL, holding only 26.24 per cent of the secured interest, lacked the legal right to enforce unilaterally. The common security was treated as relinquished to the estate by operation of law, freeing the liquidator to proceed.

³⁹ *Srikanth Dwarakanath, Liquidator of Surana Power Ltd v Bharat Heavy Electricals Ltd*, Company Appeal (AT) (Insolvency) No 1510 of 2019 (NCLAT, 18 June 2020).

⁴⁰ *Srikanth Dwarakanath* (n 13).

The Surana Power judgment establishes three operational principles for any dual-capacity creditor relying on a common security in liquidation. *First*, where a security interest is shared, fractional enforcement is not available. A physical asset is typically indivisible, and a minority co-holder cannot selectively enforce its fractional interest in isolation from the majority, particularly once the majority has already relinquished its share to the estate. The right to enforce must be exercised, if at all, by creditors commanding the requisite majority in value.⁴¹

Second, the sixty per cent threshold applies wherever common security exists. A dual-capacity creditor participating in a broader consortium can exercise the section 52 realisation right only if its combined claim, the aggregate of its financial and operational exposures, accounts for at least sixty per cent of the total secured debt encumbering the specific asset, or if it can obtain the formal consent of other secured creditors to cross that threshold.⁴²

Third, sole charge holders stand in a different position. Where the dual-capacity creditor is the only holder of the security interest on the relevant assets, no other creditors hold a *pari passu* or subordinate charge, it controls one hundred per cent of the security and may enforce independently under section 52 without needing to satisfy any majority consent requirement, subject only to the surplus remittance obligation.⁴³

Judicial Evolution of the Secured Operational Creditor

The Surana Power ruling is best understood against the backdrop of a broader shift in judicial thinking about secured operational creditors, a shift that has created new and sometimes disruptive tensions within the section 53 waterfall.

In *State Tax Officer v Rainbow Papers Ltd*⁴⁴, the Supreme Court held that a statutory first charge created by operation of section 48 of the Gujarat Value Added Tax Act, 2003, constituted a “security interest” within the meaning of section 3(30) of the Code. The State Tax Department was accordingly elevated from an unsecured operational creditor to a Secured Operational Creditor. The immediate consequence was disruptive: government statutory dues, which had traditionally languished at the fifth tier under section 53(1)(e), could now be argued to leap to the second tier under section 53(1)(b)(ii) upon relinquishment of the statutory

⁴¹ Ibid.

⁴² Ibid.

⁴³ Insolvency and Bankruptcy Code 2016, s 52.

⁴⁴ *State Tax Officer v Rainbow Papers Ltd* (2022) 13 SCC 208.

charge.⁴⁵ State departments were suddenly competing directly with the registered security interests of banks over the same pool of assets.

The Supreme Court undertook a significant course correction in *Paschimanchal Vidyut Vitran Nigam Ltd v Raman Ispat Pvt Ltd*⁴⁶. PVVNL, a state-owned power distribution company, had executed a power purchase agreement under which outstanding electricity dues constituted a charge on the debtor's assets. PVVNL argued, relying on *Rainbow Papers*, that it was a Secured Operational Creditor entitled to realise its security independently or rank at the top of the waterfall.

The Court affirmed that PVVNL was a Secured Operational Creditor by virtue of the contractual charge and the applicable regulatory framework. However, it held that the *Rainbow Papers* judgment was “confined to the facts of that case alone” and could not be deployed as a general precedent to displace the section 53 waterfall mechanism. Critically, the Court established that section 238 of the Code⁴⁷ grants the IBC overriding effect over the Electricity Act, 2003, notwithstanding that statute's own non-obstante clauses. A Secured Operational Creditor in PVVNL's position must therefore exercise its rights within the IBC framework, either realising the security under section 52 (subject to the sixty per cent rule where the security is shared) or relinquishing and standing in the section 53 queue. The Court directed the liquidator to assess PVVNL's claim in accordance with the law, leaving the question of enforceability of the charge, including its registration status under the Companies Act, to be determined in that process.

Most recently, in *Greater Noida Industrial Development Authority v Prabhjit Singh Soni*,⁴⁸ the Supreme Court recognised the Greater Noida Industrial Development Authority (GNIDA) as a Secured Operational Creditor by virtue of the statutory charge created under sections 13,⁴⁹ 13A,⁵⁰ and 14 of the Uttar Pradesh Industrial Area Development Act, 1976.⁵¹ The Court reinforced the principle, consistent with *PVVNL*, that secured status, however acquired, does not allow a creditor to bypass the Code's distributional hierarchy. Where GNIDA's statutory charge is subordinate to a bank's registered first charge, GNIDA cannot displace that bank's

⁴⁵ Insolvency and Bankruptcy Code 2016, ss 53(1)(b)(ii) and 53(1)(e).

⁴⁶ *Paschimanchal Vidyut Vitran Nigam Ltd v Raman Ispat Pvt Ltd* (2023) 11 SCC 613.

⁴⁷ Insolvency and Bankruptcy Code 2016, s 238.

⁴⁸ *Greater Noida Industrial Development Authority* (n 30).

⁴⁹ Uttar Pradesh Industrial Area Development Act 1976, s 13.

⁵⁰ Uttar Pradesh Industrial Area Development Act 1976, s 13A.

⁵¹ Uttar Pradesh Industrial Area Development Act 1976, s 14.

primary realisation rights. All secured creditors, regardless of whether their origins are contractual or statutory, must comply with established inter-creditor arrangements, registration priorities, and the overarching framework of the Code.

APPLICATION OF PROCEEDS

A dual-capacity creditor that successfully satisfies the sixty per cent threshold and elects independent realisation must then comply with strict rules governing the application of proceeds. The generated proceeds must be applied to extinguish the outstanding debts.⁵² Where the realised value exceeds the total combined debt, the creditor recovers in full but must remit the surplus to the liquidator under section 52(7).⁵³

The real danger arises where the realised value falls short of the combined debt. Under section 53(1)(e)(ii), debts owed to a secured creditor for any amount unpaid following enforcement of the security interest are demoted to the fifth tier, where they rank alongside government statutory dues.⁵⁴ Had the creditor chosen to relinquish the security, both the financial and operational secured claims would have ranked at the second tier under section 53(1)(b).⁵⁵ By choosing independent realisation and failing to clear the debt, the unrecovered portion of both the financial and operational debt falls to the fifth tier under section 53(1)(e).⁵⁶ This represents a stark punishment for the choice of independent realisation, one that is deliberately calibrated to push secured creditors towards collective action.

The application of insufficient proceeds is further shaped by the underlying contracts. If the common security agreement outlines an internal distribution waterfall, for example, stipulating that proceeds shall first satisfy the term loan facility and thereafter any trade receivables, the creditor is legally bound by that sequence. In a shortfall scenario, this internal ordering typically means the financial debt is satisfied to the maximum extent possible while the operational debt absorbs the residual loss, falling to section 53(1)(e)(ii) with limited prospects of meaningful recovery.⁵⁷

⁵² Insolvency and Bankruptcy Code 2016, s 52(4).

⁵³ Insolvency and Bankruptcy Code 2016, s 52(7).

⁵⁴ Insolvency and Bankruptcy Code 2016, s 53(1)(e)(ii).

⁵⁵ Insolvency and Bankruptcy Code 2016, s 53(1)(b).

⁵⁶ Insolvency and Bankruptcy Code 2016, s 53(1)(e).

⁵⁷ Insolvency and Bankruptcy Code 2016, s 53(1)(e)(ii).

STRATEGIC IMPERATIVES AND FUTURE LEGISLATIVE OUTLOOK

The tensions exposed by this jurisprudence have practical implications for the structuring of commercial credit agreements. Entities that simultaneously provide capital financing and operational services to a corporate debtor must document their security interests with care. Cross-collateralisation clauses should expressly state that the secured asset covers all exposures, including term facilities, working capital, and operational trade receivables, to avoid any ambiguity about the scope of the charge.

To avoid the kind of deadlock encountered in the *Surana Power* litigation, dual-capacity creditors participating in syndicated lending or broader consortiums should negotiate robust, enforceable Inter-Creditor Agreements (ICAs). These should clearly address voting thresholds for enforcement, the distribution of realisation proceeds, and critically, the recognition of the dual-capacity creditor's aggregate exposure (financial plus operational) in computing whether the sixty per cent majority has been satisfied. The operational component of the creditor's claim must be factored into that calculation explicitly, not left to be resolved in adversarial proceedings. Above all, all security interests, including those intended to secure operational advances, must be formally registered under section 77 of the Companies Act.⁵⁸ An unregistered charge is void against the liquidator, a point that the *PVVNL* litigation illustrates with clarity.

Legislatively, the framework for secured creditors remains under active review. The Insolvency Law Committee⁵⁹ and parliamentary standing committees⁶⁰ have noted the anomaly whereby section 53(1)(e) places secured creditors who attempt independent realisation in a worse position than those who relinquish, yet section 52 appears to encourage independent realisation.⁶¹ Proposed amendments seek to address this tension in two ways. *First*, there is a proposal to reduce the decision window for secured creditors from 30 days to 14 days,⁶² which would accelerate the liquidation timeline and reduce value erosion caused by uncertainty over asset encumbrances. *Second*, and more significantly, proposals exist to embed the sixty per cent (or sixty-six per cent) consent requirement for common security enforcement directly in

⁵⁸ Companies Act 2013 (Act 18 of 2013), s 77.

⁵⁹ Ministry of Corporate Affairs, Report of the Insolvency Law Committee (May 2022).

⁶⁰ Standing Committee on Finance, Implementation of Insolvency and Bankruptcy Code Pitfalls and Solutions (32nd Report, August 2021).

⁶¹ Insolvency and Bankruptcy Code 2016, s 53(1)(e).

⁶² Ministry of Corporate Affairs, Notice Inviting Comments on Changes to the Insolvency and Bankruptcy Code (January 2023).

section 52 of the Code itself.⁶³ This would transform the judicial import of SARFAESI principles from *Surana Power*, currently a matter of tribunal interpretation, into an unambiguous statutory mandate, significantly improving predictability for dual-capacity creditors navigating shared security scenarios.

CONCLUSION

The Insolvency and Bankruptcy Code, 2016, provides a definitive, if intricate, legal pathway for the dual-capacity creditor. A creditor simultaneously holding secured financial and secured operational debt can validly rely on the same common security in liquidation; the Code does not prohibit cross-collateralisation, and no authority requires the two classes of exposure to be secured separately. But the legal architecture governing what the creditor may do with that common security imposes real and significant constraints.

Section 21(4) mandates that the dual-capacity creditor be split into a financial claimant and an operational claimant, and this conceptual separation persists through the liquidation process. If the creditor relinquishes the common security, both components rank at the second tier of the section 53 waterfall, enjoying the same priority as workmen's dues, a favourable position that makes relinquishment the strategically safer choice in most scenarios.

Where the creditor opts for independent realisation, the sixty per cent majority rule from *Srikanth Dwarakanath v BHEL*⁶⁴ operates as an effective check on minority enforcement. A dual-capacity creditor holding less than sixty per cent of the total secured interest in a common asset cannot unilaterally pull that asset from the estate. The decisions in *PVVNL* and *Greater Noida* confirm that statutory secured operational creditors are entitled to the full protections of the Code, but cannot use their secured status to sidestep the section 53 hierarchy. Any shortfall following independent realisation is sharply demoted to the fifth tier, a penalty severe enough to make relinquishment the rational choice in all but the clearest cases of a sole, well-secured charge holder. What the Code achieves through this structure, ultimately, is not a prohibition on independent enforcement but a strong financial incentive for collective action, one that has, through recent litigation, proven robust enough to resist even the most determined minority creditors.

⁶³ Ibid.

⁶⁴ *Srikanth Dwarakanath* (n 13).