

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD



ITEM No.301
IA/80(AHM)2026
in
C.P.(IB)/119(AHM)2022

Under Section 42 IBC r/w Rule 30 IBBI Reg, 2016

IN THE MATTER OF:

The Commissioner of Customs
V/s

Mr. Arvind Gaudana Liquidator of M/s Spel Granito Pvt. Ltd

.....Applicant

.....Respondent

ITEM No.302
IA/193(AHM)2026
in
C.P.(IB)/119(AHM)2022

Under Section 60(5) IBC r/w Rule 11 NCLT

IN THE MATTER OF:

Mr. Arvind Gaudana Liquidator of Corporate Debtor M/s Spel
Granito Private Limited

V/s

Cosmos Co- Operative Bank Limited Through its Authorized
Officer & Anr.

.....Applicant

.....Respondent

Order delivered on: 04/05/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The Common order is pronounced in the open court, vide separate sheet.

Sdl-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sdl/-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

I.A. No.80/NCLT(AHM)2026

In

C.P. (IB) No.119/NCLT(AHM)2022

AND

I.A. No.193/NCLT(AHM)2026

In

C.P. (IB) No.119/NCLT(AHM)2022

In the matter of: M/s. Spel Granito Private Limited.

I.A. No.80/NCLT(AHM)2026

[Interlocutory Application filed under Section 42 of the Insolvency & Bankruptcy Code, 2016 read with Rule 30 of the IBBI (Liquidation Process) Regulations, 2016]

Ajoy Kumar

The Commissioner of Customs
Customs House, Mundra Port & Sez
Mundra – 370421

...Applicant

VERSUS

Mr. Arvind Gaudana

Liquidator of M/s Spel Granito Private Limited
307, Ahirwad Paras, Corporate Road,
Near Prahladnagar Garden, Satellite,
Ahmedabad, Gujarat-380015.

..... Respondent

I.A. No.193/NCLT(AHM)2026

[Interlocutory Application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016]



Mr. Arvind Gaudana

Liquidator of

M/s. Spel Granito Pvt. Ltd.

[IP Reg. No.IBBI/IPA-002/IP-N00283/2017-18/10841]

Office of Resolution Professional:

307, Ashirwad Paras,

Nr. Prahladnagar Garden,

Corporate Road, Satellite,

Ahmedabad, Gujarat – 380015

...Applicant/Liquidator

VERSUS

1. Cosmos Co-operative Bank Limited

Through its Authorized Officer

Cosmos Bhavan, Opp. Sales India,

Income Tax Cross Road,

Ashram Road, Navrangpura,

Ahmedabad-380009.

...Respondent No.1

2. The deputy Commissioner of Customs

Custom House,

MP & SEZ, Mundra,

District Kutch, Gujarat

..... Respondent No.2

Order pronounced on 04.05.2026

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For the Applicant

: Mr. Tirth Nayak, Advocate for
Deputy Commissioner of Customs

For the Liquidator

: Mr. Bhargav Thakkar, Adv. a.w.
Mr. Arvind Gaudana, Liquidator in
person

For the Respondent

: Mr. Sandeep C. Bhatt, Advocate

for Cosmos Co-operative Bank

COMMON ORDER

Per: Bench

1. The present **common order** is passed in I.A. No. 80/NCLT(AHM)2026 and I.A. No. 193/NCLT(AHM)2026 arising out of liquidation of M/s. Spel Granito Private Limited ordered on 12.09.2024. The Liquidator was appointed under Section 33 and Section 34 of the Insolvency and Bankruptcy Code, 2016. Both matters relate to claim filed by Customs Department and release of fixed deposit linked with bank guarantee.
2. The **I.A. No.80/NCLT(AHM)2026** has been filed on 16.01.2026 by Ajoy Kumar, the Commissioner of Customs, Mundra, (applicant) under Section 42 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 30 of the IBBI (Liquidation Process) Regulations, 2016, with the following prayers:
 - (A) *This Hon'ble Tribunal may be pleased to quash and set aside the decision of the respondent dated 14.06.2025, inter alia, rejecting the claim of the Appellant. And/ or*
 - (B) *This Hon'ble Tribunal may be pleased to direct the respondent to consider and accept the claims in terms of Form C dated 27.05.2025 via email and 30.05.2025 sent via Speed Post; and /or*
 - (C) *This Hon'ble Tribunal may be pleased to condone the delay in relation to filing of the present Appeal;*
 - (D) *This Hon'ble Tribunal may be pleased to pass and other and/or further orders as may be deemed appropriate in the interest of justice.*



3. The Applicant/ Commissioner of Customs has placed the facts through I.A. No.80/NCLT(AHM)2026 and documents in the following manner: -

3.1 It is stated that this Tribunal vide order dated 12.09.2024 passed in Company Petition (IB) No.119 of 2022 ordered liquidation of M/s. Spel Granito Pvt. Ltd. and appointed the Liquidator. Public announcement was made on 17.09.2024 fixing 12.10.2024 as the last date for submission of claims.

3.2 The Applicant submitted that its claim was forwarded through email dated 27.05.2025 and 30.05.2025 along with Form C and supporting documents, which is annexed as Annexure C and Annexure E. The claim amount of Rs.1,63,84,041/- arises from non-fulfilment of export obligations under EPCG licences.

3.3 The Applicant has further stated that prior communication was made with the Liquidator vide letter dated 26.05.2025 requesting necessary forms and indicating tracing of documents including bank guarantee details. The said communication is annexed as Annexure C.

3.4 The Applicant has relied upon Show Cause Notices dated 02.06.2025 evidencing liability of the Corporate Debtor towards duty and interest, which is annexed as Annexure F Colly. Details of EPCG



licences and expiry of export obligation period have also been placed on record.

- 3.5 The Applicant informed the Liquidator regarding dispatch of documents through registered post and submission of claim in accordance with the liquidation process. Copies of email and forwarding letter dated 30.05.2025 are annexed as Annexure E.
- 3.6 The Liquidator instead sought discharge and return of bank guarantee without adjudicating the claim on merits. The reply dated 04.06.2025 is annexed as Annexure G. The claim was thereafter rejected solely on the ground of delay.
- 3.7 The rejection of claim was communicated by email dated 14.06.2025 stating that the claim is time barred, which is annexed as Annexure H. The Applicant has also placed earlier notices issued to the Corporate Debtor dated 17.09.2024, 18.09.2024, 24.10.2024 and 25.10.2024, annexed as Annexure I Colly.
- 3.8 The delay occurred due to tracing of old records, internal approvals and coordination with counsel. Correspondence with legal section dated 19.06.2025, 07.07.2025 and 03.11.2025 is annexed as Annexure J. No specific judicial precedents have been relied upon in the present I.A.



3.9 In view of the above facts, the Applicant/ Commissioner of Customs has sought setting aside of the decision dated 14.06.2025 rejecting its claim, direction to admit and consider the claim of Rs.1,63,84,041/-, and condonation of delay in submission of claim and filing of the present proceedings.

4. That on issuance of the notice in the I.A. No.80/NCLT(AHM)2026, the Respondent/Liquidator appeared and filed its reply on 16.03.2026 vide Inward No. D-2287 denying various averments made in the Interlocutory Application. The contentions of the Respondent/Liquidator are mentioned hereunder: -

4.1 The Respondent/Liquidator submitted that present Application is challenged as not maintainable due to delay of about 199 days from rejection dated 14.06.2025 to filing on 30.12.2025. It is submitted that the Appeal is barred under Section 42 of the Code and liable to be rejected at threshold.

4.2 It is submitted that liquidation order dated 12.09.2024 was passed and public announcement dated 17.09.2024 fixed 12.10.2024 as last date for claims. The Appellant filed its claim only on 30.05.2025 after about 230 days. Copy of liquidation order is annexed as Annexure R-1 and public announcement is annexed as Annexure R-2.



- 4.3 The Respondent/Liquidator states that the Appellant had knowledge of liquidation proceedings through its own communications dated 18.09.2024, 24.10.2024 and 25.10.2024. It is submitted that delay arose due to internal processes which cannot extend statutory timelines. Copy of letter dated 26.05.2025 is annexed as Annexure R-3.
- 4.4 It is submitted that explanations such as tracing records, file movement and internal correspondence do not constitute sufficient cause. Government departments are bound by timelines under the Code. The delay is stated to be due to inaction and cannot be condoned.
- 4.5 The Respondent/Liquidator submits that rejection dated 14.06.2025 was made in discharge of statutory duty after examining delay, stage of liquidation and documents. It is stated that the rejection was reasoned and within jurisdiction under the Code.
- 4.6 It is submitted that reliance on show cause notices dated 02.06.2025 does not establish a crystallized liability. The Appellant has not produced any adjudication determining Rs.1,63,84,041/- as due on liquidation commencement date. Copy of show cause notices is annexed as Annexure R-5 (colly.).
- 4.7 The claim relates to bank guarantee No.049BG1415011 dated 09.08.2014 aggregating



Rs.18,50,000/- which had expired prior to CIRP and was not invoked. The issue is subject matter of accompanying IA (I.B.C)/193/AHM/2026 under Section 60(5).

- 4.8 The Appellant's letter dated 26.05.2025 shows that records were still being traced and claim was not complete. Reminder emails dated 05.07.2025 and 06.08.2025 are annexed as Annexure R-10 (colly.) showing steps for release of bank guarantee.
- 4.9 The Respondent/Liquidator submits that Liquidator has power to verify and reject claims and cannot entertain delayed and unsupported claims. It is stated that limitation and maintainability are threshold issues and delayed claims cannot be examined on merits. Copies of email chain are annexed as Annexure R-4 (colly.) and rejection communication dated 14.06.2025 is annexed as Annexure R-8.
- 4.10 In view of above facts, the Respondent/Liquidator has sought dismissal of the Appeal with costs, rejection of condonation of delay, upholding rejection dated 14.06.2025, and a finding that no interference is required in liquidation process in respect of the delayed and unadjudicated claim.
5. The Applicant/ Commissioner of Customs also filed a rejoinder on 30.03.2026 vide Inward No. D 2700, denying most contentions raised by the Respondent in his reply.



The contents of Applicant/ Commissioner of Customs in the Rejoinder are reproduced as follows: -

- 5.1 The Applicant/ Commissioner of Customs submits that delay in filing the claim and filing of the Appeal are distinct. It is stated that the Respondent has treated both as the same. The Applicant contends that rejection only on delay is not proper.
- 5.2 The Applicant/ Commissioner of Customs relies upon Regulation 31 of the IBBI (Liquidation Process) Regulations. It is submitted that the Liquidator can modify the list of stakeholders. The Applicant/ Commissioner of Customs states that the claim ought to have been considered accordingly.
- 5.3 The claim arises from statutory obligations under EPCG scheme. It is stated that liability arises on failure of export obligation. The Applicant relies upon Notification dated 18.04.2013 annexed as Annexure A.
- 5.4 The Applicant/ Commissioner of Customs further relies upon Bond dated 08.08.2014 annexed as Annexure B. It is submitted that the liability is predetermined under the Bond. The Applicant states that no further adjudication is required.
- 5.5 The rejection dated 14.06.2025 was only on the ground of delay. It is stated that other grounds are subsequent. The Applicant/ Commissioner of



Customs contends that statutory liability remains unaffected.

- 5.6 The delay occurred due to departmental procedures. It is stated that records were traced and approvals were obtained. The Applicant submits that the delay was not intentional.
- 5.7 The Applicant/ Commissioner of Customs relies upon communications dated 19.06.2025, 07.07.2025 and 03.11.2025 annexed as Annexure J. It is submitted that steps were taken to process the claim. The Applicant states that conduct is bonafide.
- 5.8 The Respondent did not inform about liquidation proceedings. It is stated that knowledge arose on 22.03.2025 and claim was filed on 30.05.2025. The Applicant denies that the claim is not crystallised.
- 5.9 In view of the above facts, the Applicant/ Commissioner of Customs has sought that the Appeal be allowed, rejection dated 14.06.2025 be set aside, delay be condoned, and the Respondent be directed to admit and process the claim in accordance with law.
6. The Applicant/Commissioner Custom filed Written Submissions along-with judgments on 08.04.2026 vide Inward No. 3089. The major contentions of the Applicant are as follows: -



- 6.1 A public announcement dated 17.09.2024 was issued by the Liquidator fixing 12.10.2024 as the last date for submission of claims (Annexure B, Pg. 27–30). Around the same time, the Applicant issued multiple notices regarding non-fulfilment of export obligations under EPCG Licenses (Annexure I (Colly), Pg. 79–82).
- 6.2 Further demand notices, including final duty demand notices dated 24.10.2024 and 25.10.2024, were issued by the Applicant for non-fulfilment of export obligations (Annexure I (Colly), Pg. 80–81).
- 6.3 The Applicant submitted its claim on 30.05.2025 for an amount of INR 1,63,84,041 arising from import/export obligation defaults (Annexure D, Pg. 42–44). Thereafter, a Show Cause Notice dated 02.06.2025 was issued (Annexure F, Pg. 66–73), to which the Respondent replied on 04.06.2025 disputing invocation of the bank guarantee (Annexure G, Pg. 74–75).
- 6.4 The Liquidator rejected the Applicant’s claim on 14.06.2025 on the ground of being time-barred (Annexure H, Pg. 76–78), which led to the filing of the present appeal.
- 6.5 The Applicant submits that there is a delay of 230 days in filing the claim beyond the prescribed date (12.10.2024), and a further delay of 191 days in



filing the present appeal beyond the statutory 14-day period, resulting in a total delay of 421 days.

- 6.6 The Applicant justifies the delay by stating that the claim arises from non-fulfilment of export obligations under the EPCG License, where the legally prescribed Export Obligation Period is six years from the date of authorization as per Notification No. 22/2013-Customs (Annexed as Flag A).
- 6.7 It is submitted that the relevant license dated 09.06.2017 had an obligation period ending on 09.06.2023, which was further extended due to pandemic-related relaxations under Notification No. 28/2015-2020 dated 23.09.2021 (Annexed as Flag B). The Applicant contends that only after expiry of such extended period and issuance of final demand notice on 25.10.2024 did the cause of action crystallize.
- 6.8 The Applicant further submits that the delay occurred due to statutory timelines, departmental approvals, and failure of the Liquidator to perform duties under Sections 35(1)(e), (g), (k), and (m) of the Code.
- 6.9 Reliance is placed on the CESTAT Order dated 20.10.2022 (Annexed as Flag C). Accordingly, the Applicant prays that the delay be condoned and



appropriate reliefs be granted by this Hon'ble Tribunal.

7. The Respondent/Liquidator also filed Written Submissions along-with judgments on 07.04.2026 vide Inward No. 3027. The contentions of the Respondent/Liquidator are as follows: -

7.1 The Respondent/Liquidator submitted that the appeal filed under Section 42 of the Insolvency and Bankruptcy Code, 2016 is fundamentally flawed and deserves outright rejection. The Appellant's claim itself was filed with a massive delay of about 230 days beyond the prescribed deadline, and the appeal against rejection was also filed after an unjustified delay of about 199 days.

7.2 The liquidation timeline was clearly established: liquidation order dated 12.09.2024, public announcement on 17.09.2024, and claim submission deadline on 12.10.2024. The Appellant was fully aware of these proceedings, as shown by its own communications dated 18.09.2024, 24.10.2024, and 25.10.2024. Hence, the delay is due to internal negligence and not lack of knowledge.

7.3 The Appellant's own letter dated 26.05.2025 admits that it was still tracing the bank guarantee and had not located key documents. This shows the claim



was incomplete and not ready for adjudication, undermining its validity.

- 7.4 The documents relied upon by the Appellant, including Form-C and Show Cause Notices dated 02.06.2025, do not establish a crystallized or adjudicated debt as on the liquidation commencement date. A show cause notice is merely a proposal and does not create enforceable liability.
- 7.5 The Appellant's argument that statutory dues automatically qualify for admission is rejected. Even government authorities must comply with the timelines and framework under the IBC. Internal administrative delays or procedural issues cannot justify late filing.
- 7.6 The rejection of the claim dated 14.06.2025 was lawful and reasoned. The Liquidator acted within statutory duties by examining timeliness and legal validity before rejecting the claim. There was no obligation to adjudicate disputed claims lacking final determination.
- 7.7 The appeal itself is barred by delay. Section 42 remedies must be exercised within a reasonable time. The Appellant's explanation of administrative delays and record tracing is not legally acceptable and would otherwise disrupt the time-bound insolvency process.



7.8 The matter is also connected to a separate dispute regarding an expired bank guarantee and fixed deposit. The guarantee had expired long before CIRP and was never invoked within its validity. The present claim appears to be an indirect attempt to revive a lapsed position.

7.9 Entertaining such delayed claims and appeals would disturb the certainty and finality of liquidation proceedings. No adjudicated liability has been shown, and no valid explanation exists for the delays. Therefore, the appeal is liable to be dismissed on both limitation and merits.

7.10 The Respondent relies on the judgment of the Hon'ble Supreme Court in V. Nagarajan v. SKS Ispat & Power Ltd. to support strict adherence to limitation and procedural discipline under the IBC framework.

8. The **I.A. No.193/NCLT(AHM)2026** has been filed on 05.02.2026 by Mr. Arvind Gaudana Liquidator of M/s. Spel Granito Pvt. Ltd. (the Applicant/Liquidator) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016, with the following prayers: -

a. Direct Respondent No.1 i.e. Cosmos Co-operative Bank Limited to release and transfer the Fixed Deposit amount of Rs.18,50,000/- along with accrued



interest to the Liquidation Account of the Corporate Debtor;

- b. Direct Respondent No.2 i.e. Custom Department Mundra, to either invoke the Bank Guarantee strictly in accordance with law within a time-bound period or issue a discharge/no-claim confirmation in respect of Bank Guarantee No.049BG1415011;*
- c. Declare that in absence of invocation within the prescribed period, the Bank Guarantee stands extinguished and unenforceable;*
- d. Pass such further or other orders as this Hon'ble Tribunal may deem fit in the interest of justice and effective liquidation.*

9. The Applicant/Liquidator has placed the facts through the Interlocutory Application and documents in the following manner: -

9.1 The Corporate Debtor was admitted into CIRP on 19.05.2023 and subsequently ordered into liquidation, and the Applicant is required to take custody and control of all assets of the Corporate Debtor.

9.2 That prior to CIRP, a Bank Guarantee dated 09.08.2014 was issued by Respondent No.1 in favour of Customs Department under EPCG Scheme for Rs.18,50,000, supported by 100 percent cash margin in the form of Fixed Deposits. The



documents are annexed as Annexure B and Annexure C.

- 9.3 The Bank Guarantee expired on 08.08.2017 and even as per extensions relied upon, the outer limit ended on 01.04.2020, which is prior to insolvency commencement date.
- 9.4 That no invocation of the Bank Guarantee was made by Respondent No.2 within the validity or claim period and no demand was raised in accordance with the terms of the guarantee. The correspondence evidencing the same is annexed as Annexure D.
- 9.5 The Respondent No.1 filed a claim dated 07.10.2024 for Rs.18,50,000 as financial debt, which was examined and rejected by the Applicant on 11.10.2024 on the ground that no enforceable liability existed. The documents are annexed as Annexure E and Annexure F.
- 9.6 The Applicant/Liquidator called upon Respondent No.1 to release the Fixed Deposit amount, however Respondent No.1 refused on the ground of non-return of original Bank Guarantee and discharge letter from Customs Department. The correspondence is annexed as Annexure G and Annexure H.



9.7 The Applicant/Liquidator addressed communications dated 20.05.2025, 05.07.2025 and 06.08.2025 to Respondent No.2, however Respondent No.2 neither invoked the Bank Guarantee nor issued discharge and only issued letter dated 26.05.2025 and show cause notice dated 03.06.2025. The documents are annexed as Annexure J.

9.8 In view of the above facts, the Applicant/Liquidator has sought directions against Respondent No.1/ Cosmos Co-operative Bank Ltd and Respondent No.2/ the Customs Department for release of Fixed Deposit amount of Rs.18,50,000 along with accrued interest forming part of liquidation estate and for such further directions as may be necessary under the Code.

10. That on issuance of the notice in the Interlocutory Application, the Respondent No.1/ Cosmos Co-operative Bank has appeared and filed its reply on Respondent No.1 on 13.03.2026 vide Inward No. D 2256 denying various averments made in the Interlocutory Application. The contentions of the Respondent No.1/ Cosmos Co-operative Bank are mentioned hereunder: -

10.1 It is submitted that M/s. Surani Tiles Pvt. Ltd. was granted financial assistance on 20.06.2014 with Bank Guarantee initially of Rs.9,00,000 enhanced to Rs.18,50,000 in favour of the President of India



through Customs Authority. The said facility was secured by Fixed Deposit of Rs.18,50,000 with lien.

10.2 The Respondent No.1/Bank issued letter dated 09.08.2014 stating that the Bank Guarantee is subject to automatic renewal till final decision of the matter. Therefore, the Fixed Deposit cannot be released until the issue of invocation is finally decided.

10.3 The Respondent No.1/Bank states that the Customs Department vide letter dated 01.03.2019 confirmed auto renewal of Bank Guarantee. Accordingly, extension dated 12.03.2019 was issued undertaking renewal till final decision, hence payment cannot be made without return of original Bank Guarantee.

10.4 The Respondent No.1/Bank submitted claim of Rs.18,50,000 in CIRP of M/s. Spel Granito Pvt. Ltd. in Form-D. The claim was rejected by Resolution Professional on the ground of expiry of Bank Guarantee.

10.5 The Applicant/Liquidator sought release of Fixed Deposit vide letter dated 26.04.2025. The Respondent No.1/Bank replied on 02.05.2025 stating that no response was received from Customs Department despite communication and the amount will be released only upon return of original Bank Guarantee.



10.6 The Customs Department issued Show Cause Notice dated 02.06.2025 which was replied by the Applicant on 04.06.2025. Thereafter, demand was raised on 20.02.2026 to which the Respondent No.1/Bank replied that the matter is pending before this Tribunal.

10.7 In view of above stated facts, the Respondent No.1/Cosmos Bank has sought that the present IA be rejected and no direction be issued for release of Fixed Deposit, or in the alternative, the amount be directed to be deposited before this Tribunal subject to return of original Bank Guarantee by Respondent No.2.

11. The Respondent No.2/Commissioner Custom also appeared and filed its reply on 09.03.2026 vide Inward No. D-2067 denying various averments made in the Interlocutory Application. The contentions of the Respondent No.2 are mentioned hereunder: -

11.1 The Respondent No.2 submits that the Corporate Debtor had availed exemption under Notification No.22/2013-Customs dated 18.04.2013 under EPCG License by furnishing Bank Guarantee dated 09.08.2014 and executing Bond No.2000695807. Copy of the Bond is annexed as Annexure A.

11.2 It is stated that the Bond requires compliance with notification and license conditions and fulfilment of



export obligation within prescribed time, failing which customs duty with interest @ 15% per annum becomes payable. The liability of surety remains unaffected by any act or omission of the Government.

11.3 The Respondent No.2 has placed the facts through this Reply that liability for failure to fulfil export obligation crystallizes after 6 years under Notification dated 18.04.2013 and thereafter the Bank Guarantee becomes enforceable. Copy of the Notification is annexed as Annexure B.

11.4 The Respondent No.2 submits that the Bank Guarantee contains an auto-renewal clause and remains valid till discharge or invocation and it invoked the Bank Guarantee on 19.02.2026. Copy of invocation communication is annexed as Annexure C.

11.5 It is further submitted that Respondent No.1 refused to honour the invocation vide communication dated 23.02.2026 citing pendency of proceedings and Respondent No.2 has reserved its right to take action. Copy of the communication is annexed as Annexure D.

11.6 The Respondent No.2 submits that Bank Guarantee is not part of liquidation estate under Section 36 of the Code as it is not an asset of the Corporate Debtor and reliance is placed on judgment in Mr.



Rajendra Prasad Tak vs. Mahanadi Coalfields Limited & Anr. It also relies on RBI Master Circular dated 01.07.2013 recognizing auto-renewal clause. Copy of Circular is annexed as Annexure E.

11.7 In view of the above facts, Respondent No.2 has sought dismissal of the I.A. and permission to invoke and encash the Bank Guarantee due to non-fulfilment of EPCG obligations by the Corporate Debtor.

12. The Applicant/Liquidator has also filed a rejoinder on 07.04.2026 vide Inward No. D 3030 to the Reply of the Respondent No.1/Cosmos Bank. The contents of the Applicant/Liquidator in the Rejoinder are reproduced as follows: -

12.1 The Applicant/Liquidator submitted that Respondent No. 1 has taken inconsistent positions contrary to its own documents and conduct, and has relied selectively on guarantee papers while ignoring the complete guarantee structure including Annexure B. The earlier claim filed by Respondent No. 1 in Form-D was rejected on the ground of expiry and non-invocation of the bank guarantee.

12.2 The bank guarantee dated 09.08.2014 for Rs.9,00,000/- was time-bound, with original validity up to 08.08.2017 and extension only up to 01.04.2020 as recorded in Annexure B and the Date



& Events. The Liquidator's notices dated 25.04.2025 and 20.05.2025 confirm the same based on the bank's own representation.

12.3 The bank's reliance on an auto-renewal clause is not supported by the complete documentation, which includes extension papers and counter-guarantee documents forming part of Annexure B. The documents show that extensions were specific and not automatic or perpetual.

12.4 The Clause 13 of the counter-guarantee permits cancellation before or after expiry and requires return of documents, whereas Clause 14 cannot be read to create an indefinite liability. The guarantee structure therefore recognizes expiry and does not support a continuing lien.

12.5 The Respondent No. 1's letter dated 19.01.2024, referred in the record, requested return of the original bank guarantee and discharge, while stating extension only up to 01.04.2020. This establishes that the bank treated the guarantee as expired and only awaited return of documents.

12.6 The demand raised by Customs on 19.02.2026 and subsequent correspondence dated 23.02.2026 and 27.02.2026 are beyond the admitted validity period ending 01.04.2020. Such demand does not revive an expired guarantee.



- 12.7 The bank's contention that the Fixed Deposit cannot be released without return of the original guarantee is not sustainable in law. Non-return of documents does not create a continuing security right or justify retention of the Corporate Debtor's funds.
- 12.8 The Respondent No. 1 has stated that it has no objection to release of the amount or to deposit the same before the Tribunal. This shows that the bank does not claim ownership and is only seeking protection against possible future claims.
- 12.9 The documentary record including Annexure B, the notices dated 25.04.2025 and 20.05.2025, and the letter dated 19.01.2024 establishes that the guarantee expired and no valid invocation exists. The continued withholding of Rs.18,50,000/- is without legal basis.
- 12.10 In view of the above facts, the Applicant/Liquidator has sought rejection of the Reply of Respondent No. 1 and a direction to release and transfer the Fixed Deposit amount of Rs.18,50,000/- along with accrued interest to the liquidation account of the Corporate Debtor.
- 13.** The Applicant/Liquidator has also filed a rejoinder on 07.04.2026 vide Inward No. D 3030 to the Reply of the Respondent No.2/Commissioner Custom. The contents of the Applicant/Liquidator in the Rejoinder are reproduced as follows: -



- 13.1 The Applicant/Liquidator submits that Respondent No. 2 has attempted to divert the controversy by relying on EPCG obligations, bond conditions, and internal processes, which are irrelevant to the present Application. The limited issue is whether an expired and uninvoked Bank Guarantee can justify continued lien over Fixed Deposits of the Corporate Debtor. Such extraneous issues deserve rejection at the threshold.
- 13.2 It is submitted that the Application does not seek adjudication of customs dues or EPCG liabilities, which fall under a separate statutory regime. Any alleged liability under the EPCG scheme must be enforced strictly under the Customs Act, 1962. Such statutory obligations cannot extend or revive an expired Bank Guarantee.
- 13.3 The Applicant submits that a Bank Guarantee is an independent and autonomous contract, enforceable strictly as per its terms. Its validity is contingent upon invocation within the stipulated period. The Respondent's attempt to rely on underlying obligations to extend its life is contrary to settled law.
- 13.4 It is further submitted that reliance on an alleged auto-renewal clause is misconceived. Such clauses operate only during subsistence of the guarantee and cannot confer perpetual validity. No material



has been produced to show any renewal or extension beyond the expiry date.

- 13.5 The Respondent has admitted that the Bank Guarantee was invoked only on or about 19.02.2026. The guarantee had expired on 08.08.2017, and even alleged extensions did not survive beyond 01.04.2020, prior to the insolvency commencement date of 19.05.2023. Invocation after expiry is non-est and legally unenforceable.
- 13.6 The Applicant submits that Respondent No. 2 cannot revive a lapsed instrument through belated invocation after years of inaction. Such conduct violates settled principles governing bank guarantees and undermines the time-bound framework of the Code. The reliance on Section 36(4) of the Code is misplaced.
- 13.7 It is clarified that the relief sought is not against the Bank Guarantee but for release of Fixed Deposit of Rs.18,50,000/-, being 100% margin of the Corporate Debtor. The Fixed Deposit is an asset forming part of the liquidation estate under Section 36(3) of the Code. Continued lien after expiry of the guarantee is without authority of law.
- 13.8 The Applicant submits that conditions such as return of original guarantee or discharge certificate apply only during subsistence of a valid guarantee. Once the guarantee expires, such conditions cannot



be used to indefinitely retain security. Reliance on RBI Circulars and EPCG framework is irrelevant and misplaced.

13.9 It is submitted that the Respondent's inaction, delay, and belated invocation reflect lack of diligence and an attempt to justify an untenable position. The Fixed Deposit is being wrongfully withheld, frustrating the liquidation process and the object of the Code. Therefore, the Reply deserves rejection and the Application deserves to be allowed under Section 60(5) of the Code.

14. The Applicant/Liquidator has filed Written Submissions along-with judgments on 07.04.2026 vide Inward No. D-3029. The major contentions of the Applicant are as follows: -

14.1 The Applicant/Liquidator submits that the present Interlocutory Application concerns wrongful blockage of ₹18,50,000/- (with accrued interest), which was furnished by the Corporate Debtor as 100% margin money against a bank guarantee dated 09.08.2014.

14.2 The core issue is whether such funds can remain blocked when the guarantee had already expired, the related claim was rejected, and invocation was attempted belatedly in February 2026.

14.3 It is submitted that the guarantee terms (Annexure-B) clearly state that the bank stands discharged



unless a claim is made on or before 08.08.2017. The documents also recognize expiry and return of the guarantee as legally significant events. Therefore, selective reliance on an alleged “auto-renewal clause” is untenable.

14.4 The conduct of Respondent No. 1 (Cosmos Bank) supports the Applicant’s case. The bank itself acknowledged that the guarantee was valid till 08.08.2017 and, at most, extended till 01.04.2020. It also requested return of the original guarantee in January 2024. Hence, its present claim of continued validity till 2026 is contradictory.

14.5 Respondent No. 1 filed a Form-D claim on 07.10.2024 for ₹18,50,000/- under the same guarantee, which was rejected by the Liquidator on 11.10.2024 as the guarantee had expired prior to CIRP and was not invoked. Having submitted to the insolvency process, the bank cannot now assert rights outside it without any independent legal basis.

14.6 Respondent No. 2 (Customs) relies on EPCG obligations to argue continuing liability. However, the Applicant submits that underlying customs liability is distinct from the contractual validity of the bank guarantee. Once the guarantee expired and was not invoked within its validity, it cannot be treated as continuing security.



- 14.7 Customs invoked the guarantee only on 19.02.2026, long after expiry (even as per the bank's own case of 01.04.2020) and after CIRP and liquidation commenced. Such delayed invocation cannot revive a time-barred guarantee.
- 14.8 The Applicant clarifies that it is not seeking to appropriate the bank guarantee itself, but only release of the Fixed Deposit margin money, which is the Corporate Debtor's own asset. The question is whether such funds can remain blocked on the basis of an expired guarantee, to which Respondents have no valid answer.
- 14.9 Respondent No. 1 has stated that it has no objection to release of the FDR and is willing to deposit the amount before the Tribunal, subject to return of the original guarantee. This indicates that the bank has no independent claim over the funds, and its stance is merely procedural.
- 14.10 Following citations are relied upon by the Applicant/Liquidator: -
- State Bank of India v. Mula Sahakari Sakhar Karkhana Ltd., (2006) 6 SCC 293.***
- Vinitec Electronics Pvt. Ltd. v. HCL Infosystems Ltd., (2008) 1 SCC 544.***
- 14.11 Accordingly, the Applicant submits that the continued retention of the Fixed Deposit is unlawful. The Tribunal should direct Respondent No. 1 to



release ₹18,50,000/- with interest to the liquidation estate and direct Respondent No. 2 to issue discharge/no-claim confirmation and cease obstruction.

15. The Respondent No.2/Commissioner Custom also filed Written Submissions along-with judgments on 08.04.2026 vide Inward No. D-3082. The contentions of the Respondent No.2/Commissioner Custom are as follows: -

15.1 Respondent No. 2 filed a detailed chronology of events has been provided, tracing the issuance of the EPCG licence, execution of the bond, furnishing of the Bank Guarantee of ₹18,50,000/-, initiation of CIRP (19.05.2023), commencement of liquidation (12.09.2024), issuance of show cause notice (02.06.2025), and subsequent communications between Respondents No. 1 and 2 in February 2026.

15.2 The Bank Guarantee is a performance guarantee, furnished to secure compliance with export obligations under the EPCG Scheme. The guarantee is unconditional, and payable upon failure of the Corporate Debtor to fulfil its import/export obligations.

15.3 The Corporate Debtor has admittedly defaulted, as evidenced by the Show Cause Notices and communications issued by Respondent No. 2.



15.4 The Bank Guarantee contains an auto-renewal clause, which ensures its continued validity until the obligations are fulfilled or discharged.

15.5 The issue of whether Bank Guarantees and margin money form part of the liquidation estate is no longer res integra. Reliance is placed on the following judicial precedents: -

Punjab National Bank v. Supriyo Kumar Chaudhari wherein held that:

Margin money constitutes a trust for the benefit of the beneficiary and cannot be treated as an asset of the Corporate Debtor under Sections 18 and 36(4) of the Code.

Rajendra Prasad Tak v. Mahanadi Coalfields Limited wherein held that:

Margin money secures the Bank Guarantee and remains with the bank during its validity; upon invocation, it is appropriated towards payment, and does not revert to the Corporate Debtor.

Indian Overseas Bank v. Consortium of GSEC Limited wherein held that:

Adjustment of margin money is a contractual act, not enforcement of security interest, and therefore does not attract the moratorium under Section 14 of the Code.

15.6 In view of the above legal position and factual matrix, Respondent No. 2 submits that the reliefs sought by the Applicant, particularly prayers (a) and



(c), are erroneous, misconceived, and liable to be rejected.

- 16.** We have heard Ld. Counsel for the Appellant/Commissioner Custom, Ld. Counsel for the Liquidator, Ld. Counsel for the Respondent/Cosmos Co-Op Bank, considered the oral submissions of the parties and perused the material on record.
- 17.** After considering record, In I.A. No. 80/NCLT(AHM)2026 it is observed that last date for submission of claim was 12.10.2024 and claim was submitted on 30.05.2025 after delay of about 230 days. Explanation provided does not satisfy requirement under the Code and regulations.
- 18.** It is further observed that rejection was communicated on 14.06.2025 and appeal has been filed on 30.12.2025. Section 42 provides period of 14 days for filing appeal. Delay of about 199 days is not supported by sufficient cause.
- 19.** The delay of 199 days in filing the appeal and 230 days in filing the claim is gross, inordinate and unexplained in terms of settled law. Administrative delays and internal approvals do not constitute sufficient cause. The scheme of the Code mandates strict adherence to timelines and does not permit condonation of inordinate delay on administrative grounds.
- 20.** It is also observed that claim is based on show cause notices dated 02.06.2025 and no adjudication



determining liability as on liquidation commencement date is produced. The demand raised based on which claim was filed cannot be treated as crystallized debt for admission on the date of commencement of liquidation proceedings. A Show Cause Notice is only a proposal to determine liability and does not create an enforceable or adjudicated debt as on the liquidation commencement date. In absence of adjudication, the claim cannot be treated as a 'debt' within the meaning of Section 3(11) of the Code nor can it be admitted under Regulation 12 of the IBBI (Liquidation Process) Regulations, 2016.

- 21.** Further, the contention of the Appellant based on Regulation 31 of the Liquidation Process Regulations is misplaced. While the Liquidator is empowered to modify the list of stakeholders, such power cannot be exercised to override the mandatory timelines prescribed under Regulation 12 and the scheme of the Code, which mandates time-bound completion of liquidation.
- 22.** In view of above, rejection of claim dated 14.06.2025 by Liquidator is in accordance with provisions of the Code and regulations. **I.A. No.80/NCLT(AHM)2026** is **dismissed** on the ground of limitation as well as absence of a crystallized claim.
- 23.** In I.A. No. 193/NCLT(AHM)2026, it is observed that bank guarantee dated 09.08.2014 expired on 08.08.2017 and extension was up to 01.04.2020. No invocation was made



within validity period. Invocation on 19.02.2026 is beyond validity. A Bank Guarantee is an independent and autonomous contract, the enforcement of which is strictly governed by its terms as authoritatively held by the Hon'ble Supreme Court in *State Bank of India v. Mula Sahakari Sakhar Karkhana Ltd. (2006) 6 SCC 293* and *Vinitec Electronics Pvt. Ltd. v. HCL Infosystems Ltd. (2008) 1 SCC 544*. The validity period of the guarantee is fundamental, and invocation beyond such period renders the claim unenforceable in law.

24. The contention regarding auto-renewal of the Bank Guarantee is not supported by cogent material. The documents on record, including Annexure-B to the Liquidator's application and the bank's own letter dated 19.01.2024, show specific extensions only up to 01.04.2020 and no perpetual auto-renewal beyond that date
25. Even the **RBI Master Circular dated 01.07.2013** is only a prudential guideline and cannot override the contractual validity period or the provisions of the IBC. Therefore, such clause cannot operate indefinitely and cannot extend the validity of the guarantee beyond the agreed period in absence of specific renewal. Therefore, the plea of continuing validity is rejected.
26. The fixed deposit of Rs. 18,50,000/- belongs to Corporate Debtor and forms part of liquidation estate under Section



36 of the Code. Non-return of original bank guarantee does not extend liability or validity. The Fixed Deposit represents the margin money of the Corporate Debtor and does not partake the character of an independent third-party asset. Once the Bank Guarantee stands expired and unenforceable, the lien over the margin money cannot survive independently.

27. The NCLAT decisions in ***Punjab National Bank v. Supriyo Kumar Chaudhuri*** as well as in ***Rajendra Prasad Tak v. Mahanadi Coalfields Ltd. and Indian Overseas Bank v. Consortium of GSEC Ltd.*** (relied upon by Respondent No.2) protect margin money only while the Bank Guarantee remains alive and subsisting. Once the guarantee stands extinguished by efflux of time and non-invocation, the margin money reverts to the liquidation estate under Section 36(3) IBC.
28. Therefore, Cosmos Co-operative Bank Limited (Respondent No.1) is directed to release and transfer the Fixed Deposit amount of ₹18,50,000/- together with accrued interest up to the date of actual release to the Liquidation Account of the Corporate Debtor within fourteen days from the date of receipt of a copy of this order.
29. Respondent No.2 (Customs Department) is directed to issue a formal discharge in respect of Bank Guarantee No.049BG1415011 within seven days of receipt of this



order. It is declared that the said Bank Guarantee stands extinguished and unenforceable. The Customs Department shall not take any coercive action or invoke the said Bank Guarantee No.049BG1415011 in any manner whatsoever in relation to the present Bank Guarantee.

- 30. I.A. No. 193/NCLT(AHM)2026** is allowed in above terms. However, **I.A. No.80/NCLT(AHM)2026** is **dismissed**. However, considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

RK Steno

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)