

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH COURT III**

**I.A.43/2022**  
**IN**  
**CP No.2660/2018**

*Under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 11  
of the National Company Law Tribunal  
Rules, 2016,*

**Union Bank of India**

Stressed Assets Management Branch,  
104, Ground floor, Bharat House, MS  
Marg, Fort, Mumbai.

...Applicant

Vs.

**Mr. Shailesh Desai (Liquidator)**

Headway Resolution and Insolvency  
Services Private Limited, 1006, Raheja  
Centre, 10th Floor, Nariman Point,  
Mumbai - 400 021.

... Respondent No.1

**Bank of Baroda**

Backbay Reclamation Branch, Backbay  
Reclamation, Appejay House, 3, Dinshaw  
Vaccha Road, Mumbai-400020.

... Respondent No.2

**Standard Chartered Bank**

4th Floor, Crescenzo, BKC, Mumbai-  
400051.

... Respondent No. 3

**In the matter of**

*Under Section 7 of the Insolvency and  
Bankruptcy Code,2016.*

**Dena Bank**

Dena Corporate Centre, C-10, G- Block,  
Bandra- Kurla Complex, Bandra (East),  
Mumbai- 400 051.

... Financial Creditor

Vs.

**EMI Transmission Limited (in liquidation).**

101, 1st Floor, Centre Point, Dr. Babasaheb  
Ambedkar Road, Parel, Mumbai – 400012

...Corporate Debtor

**Order pronounced on: 28.04.2026**

**Coram:**

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Hariharan Neelakanta Iyer, Member (Technical).

**Appearances:**

For the Applicant:	Adv. Deepak Saxena, Adv. Shivanjali Mane, Adv. Bhardwaj, Adv. Malhar Zatakia, Adv. Kaushal Ameta i/b Legal Prism.
For the Respondent No.1:	Adv. Ayush Rajani, Adv. Mitali Bhatt, Adv. Priyank Jadhav i/b ARK Legal.
For the Respondent No.2	None appeared
For the Respondent No.3	Adv. Virgil Braganza, Adv. Shaan Bhatt i/b J. Sagar Associates.

**PER: MS. LAKSHMI GURUNG, MEMBER (JUDICIAL)**

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**ORDER**

1. This application has been filed by the Union Bank of India (**'the Applicant'**) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**), read with Rule 11 of the National Company Law Tribunal Rules, 2016, (**'NCLT Rules'**) seeking following reliefs: -

- a) *That this Tribunal be pleased to direct the Respondent No. 1 to release entire refund amount of Rs. 1,83,90,060/- (Rupees One Crore Eighty-Three Lakhs Ninety Thousand Sixty less the amount paid to the Applicant), refunded by KEC International Limited, to the Applicant;*
- b) *In the alternate this Tribunal, be pleased to direct the Respondent No. 2 & 3 to release amount of Rs. 1,16,87,810/- (Rupees One Crore Sixteen Lakhs Eighty-Seven Thousand Eight Hundred Ten only) and Rs. 4,74,578/- (Rupees Four Lakhs Seventy-Four Thousand Five Hundred Seventy-Eight only) respectively received from Respondent No.1, under section 53 of the IB Code to the Applicant;*
- c) *Any other reliefs as this Tribunal may deem fit in the circumstances of the matter.*

2. The Applicant is *inter alia* assailing the action of the Respondent No. 1 for inclusion of the amount of Bank Guarantee wrongfully invoked and encashed by KEC International Limited (**KEC**), into liquidation estate and its distribution under section 53 of Insolvency and Bankruptcy Code, 2016 (**'the Code'**).

**Brief Facts:**

3. Upon an application filed by Dena Bank under Section 7 of the Code, M/s EMI Transmission Ltd. (**the Corporate Debtor**) was admitted into Corporate Insolvency Resolution Process (**'CIRP'**) on 11.04.2019 and Respondent No. 1 was appointed as the Interim Resolution Professional (**'IRP'**) and was later confirmed as Resolution Professional (**'RP'**) of the Corporate Debtor.
4. In the tenth meeting of Committee of Creditors (**'COC'**) held on 02.01.2020, the COC noted that no resolution plan was received and hence passed a resolution to liquidate the Corporate Debtor.

5. In the meantime, during the CIRP period, KEC, being a beneficiary, invoked Bank Guarantees issued by the Applicant, on behalf of the Corporate Debtor, and the Applicant complying with the same released the amount of Bank Guarantees aggregating to Rs.2,00,00,000/- (Rupees Two Crores Only) to KEC on 28.01.2020.
6. Upon an application filed by the Respondent No.1, this Tribunal ordered for liquidation of the Corporate Debtor on 14.08.2020 in M.A No. 307/2020 and Respondent No.1 was appointed as the Liquidator.
7. As the encashment of the Bank Guarantee was not in accordance with the law, Respondent No. 1 filed IA No.2290/2020, seeking direction to KEC to refund the amount paid by the Applicant under the wrongful invocation of the Bank Guarantees. The said IA was disposed of on 02.09.2021 when KEC agreed to refund the amount to Respondent No.1. Extract of the order is reproduced below:

*“The counsel appearing for the respondent Mr. Rohit Gupta mentions that the respondent KEC International Limited is agreeable to return the bank guarantee amount of Rs. 2 crores after receiving their claim of Rs. 16,09,940/-. This proposition of the respondent is acceptable to the Applicant i.e. liquidator who is represented before us by Mr. Ayush J Rajani. The Respondent KEC International mentions that they would remit back the money in 3 weeks’ time. In view of the above proposition, the above I.A. bearing no. 2290/2020 is disposed of.”*

8. On 24.09.2021 vide email, Respondent No.1 informed the Applicant that it had received refund of Rs.1,83,90,060/- from KEC and after keeping aside amount for meeting future liquidation expenses, has proceeded to distribute balance amount of Rs. 1,50,00,000/- to the Secured Creditors as per Section 53 of the Code which is as under:

<b>Beneficiary Name</b>	<b>Claim Admitted</b>	<b>Claim %</b>	<b>Pro-rate Payment</b>
Bank of Baroda	8,22,64,49,116	77.92	16,87,810
Union bank of India	99,71,76,589	18.92	28,37,612
Standard Chartered Bank	33,40,19,146	3.16	4,74,578
<b>Total</b>	<b>10,55,73,44,851</b>	<b>100%</b>	<b>1,50,00,000</b>

9. The Applicant vide email dated 27.09.2021 replied to the Respondent No.1 that the Bank Guarantee was wrongly invoked and as it was paid by the Applicant, therefore the refunded amount should be released to the Applicant only and not to the other creditors.
10. The Respondent No.1 however, vide email dated 28.09.2021 informed the Applicant that the amount received against wrongly invoked Bank Guarantee was treated part of the liquidation estate and has been distributed as per Section 53 of the Code. Being aggrieved by this action of the Respondent No.1 the Applicant has filed the present Application.

**Submissions by the Applicant:**

11. The Applicant submitted that as the Bank Guarantee was wrongly invoked, the same cannot be treated as invocation of security interest.
12. It was further submitted that as per section 36 and 52 of the Code a security interest would form part of the Liquidation Estate only when the same is relinquished to the liquidation estate by the secured creditor.
13. The refund of Rs. 1,83,90,060/- received from KEC does not form part of liquidation estate and the Respondent No. 1 was not entitled to distribute the same under section 53 of the Code. Therefore, the Applicant is entitled to receive the entire amount of Rs.1,83,90,060/- refunded by KEC.

**Submissions of the Respondent No.1/ Liquidator:**

14. The Applicant has approached this Tribunal with unclean hands and has concealed material information that the claim of the Applicant as admitted by the Respondent No. 1 includes the claim amount towards the underlying bank guarantee of Rs. 2 crores.
15. The Applicant is part of the stakeholder's consultation committee and has not exercised its right to realise its security interest in terms of provisions of Section 52 of the Code. The Respondent No.1 has adhered to the due provisions of the Code and upon receiving the refund of the Bank Guarantee which was wrongly encashed by KEC and has distributed the said sums amongst three financial creditors i.e. Applicant and Respondent No. 2 and Respondent No.3 herein.
16. KEC during the proceedings in I.A. No. 229 of 2020 filed by the Respondent No. 1 agreed to refund an amount of Rs. 1,83,90,060/- which was duly refunded back to the account of the Corporate Debtor under the control of the Liquidator and was immediately thereafter distributed amongst the secured financial creditors in terms of provisions of Section 53 of the Code.
17. The Bank Guarantee was a live Bank Guarantee as on insolvency commencement date on 11.04.2019. The said bank guarantee is the property of the Corporate Debtor and it was only on 28.01.2020 (during the Corporate Insolvency and Resolution Process) that the said Bank Guarantee was wrongly invoked by KEC. Subsequently, on 14.08.2020 the liquidation process of Corporate Debtor stood initiated. The Applicant had filed its claim towards the said Bank Guarantee aggregating to Rs. 2 crores during the Corporate Insolvency and Resolution Process as well as the liquidation process.
18. Section 36(2) requires the Liquidator to hold the liquidation estate as a fiduciary for the benefit of all the creditors. Hence, Applicant had included the said amount in its claim filed during the Corporate

Insolvency and Resolution Process (when the Bank Guarantee was live) and even under the liquidation process which has been admitted by the Respondent No. 1.

19. The Applicant has failed to exercise its right under Section 52 of the Code within the threshold time limit of thirty days from the commencement of liquidation process. Accordingly, in view of Regulation 21A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, it is presumed that the Applicant has relinquished its right under Section 52 of the Code.
20. Reference to Section 36(g) of the Code does not come to the rescue of the Applicant when it has failed to exercise its right under Section 52 within the stipulated period of thirty days from commencement of liquidation process period, thereby relinquishment of rights falls under the presumption as per Regulation 21A of IBBI (Liquidation Process) Regulations, 2016.
21. It is reiterated that the said Bank Guarantee is not an exclusive secured asset of the Applicant. Merely because the Liquidator was able to recover dues under a wrong encashment of Bank Guarantee does not entitle the Applicant towards its full share.
22. The Respondent No.1 has kept aside a small amount towards ongoing Liquidation process costs and to meet the necessary expenses which are to be satisfied in priority under Section 53(1)(a) while the debts of the secured financial creditors fall under the subsequent category under Section 53(1)(b) of the Code.

**Additional Affidavit dated 16.04.2024 on behalf of the Applicant**

23. During the course of hearing on 23.02.2024, this Tribunal granted permission to the Applicant to place on record Form D and to provide further explanation as to how the refund should have been transferred to the Applicant only instead of distributing it to all the members.

Therefore, the Applicant filed additional affidavit and placed on record Form D dated 14.09.2020. Apart from factual matrix already captured under Facts, the Applicant added following submissions:

- i. After NCLT ordered Liquidation of the Corporate Debtor vide its Order dated 14.08.2020, the Applicant on 14.09.2020 submitted 'Form D' proof of Claim (including both Matured and Unmatured Bank Guarantee included in the claim as per the provisions of the IBC to the Respondent No. 1 i.e. before the order of Refund was passed by NCLT.
- ii. On 02.09.2021, during the course of hearing of the Liquidator's Application for refund of money, the Liquidator accepted a settlement proposal from KEC. KEC never suggested or mentioned that returned funds would form part of Liquidation Estate or to be transferred in the accounts of the Corporate Debtor.
- iii. It was submitted that Liquidator never had the requisite authority, whether on behalf of the present Applicant or the SCC, to settle the matter with KEC and the same is contrary to law.
- iv. The Applicant vide email dated 24.09.2021 had clarified that such wrongful invocation had resulted in an increased liability of approximately Rs 2 crore upon the issuing bank, therefore an amount of Rs. 1,83,90,060/- ought to have been remitted back to its Original Source i.e. rather than being distributed among the stakeholders in the course of liquidation.
- v. The Bank Guarantee was wrongly invoked by the Beneficiary during CIRP can never form part of the Liquidation Estate. The Liquidator has failed to refund amount to the Applicant's Account, when the Applicant never relinquished his right.
- vi. The Applicant does not deny on the fact that inclusion of the Bank Guarantee whether matured or unmatured has to be included and

forms part of Applicants claim. However, it was only on 02.09.2021 after the Liquidator settled the matter with KEC more than a year after the Applicant had filed Form D, the Applicant has been able to file the instant Application.

- vii. Further, the Applicant never got an opportunity to make any revision in already submitted claim form, in the event of existing crisis and long duration of the difference between the submission of Form D and actually happening of order of Refund admittedly considering the fact that the invocation was wrongful in any case should have been remitted back irrespective of whether the Applicant has included their claim while submitting Form D or not. The Applicant had to be given a chance either to revise its claim, or amount should have entirely remitted back by the Liquidator to the Applicant through its Original Source.

#### **OBSERVATION & FINDINGS**

24. Heard Ld. Counsels for the parties on both sides and perused the record.
25. For the purpose of adjudication of this case, the important facts to be noticed are:
  - a) Corporate Insolvency Resolution Process of the Corporate Debtor commenced on 11.04.2019 and Bank Guarantee was wrongly invoked by KEC on 28.01.2020.
  - b) The Applicant, without checking the subsistence of moratorium, released sum of Rs 2,00,00,000/- to KEC on 28.01.2020.
  - c) The liquidation order of the Corporate Debtor was passed on 14.08.2020. After the company was ordered for liquidation, the Applicant filed its claim on 14.09.2020 for a total amount of Rs

200,16,72,466.12 which also included the claim for encashment of Bank Guarantee.

d) In I.A. No.2290 of 2020, KEC during the course of hearing on 02.09.2021 agreed to return the Bank Guarantee amount to the Liquidator and the Refund was received on 24.09.2021.

26. The main contention of the Applicant is that the refunded amount of Rs 1,83,90,060/- received from KEC should be paid to the Applicant alone and should not be distributed to other creditors on following grounds:

a. The said amount of Rs. 1,83,90,060/- was refunded by KEC on account of wrongful encashment of Bank Guarantee and therefore should be returned to the original source i.e. the Applicant.

b. The Liquidator has failed to refund amount to the Applicant's Account, when the Applicant had never relinquished his right.

c. The Bank Guarantee, wrongly invoked by the Beneficiary during CIRP can never form part of the Liquidation Estate.

27. Refuting the contention of the Applicant, the Respondent No.1 would submit that on the date of commencement of CIRP, the said Bank Guarantee was a live guarantee and a property of the Corporate Debtor and when liquidation stood initiated on 14.08.2020, the amount receivable from KEC was included in the liquidation estate as required under section 36(2) of the Code, as Bank guarantee is not an exclusive secured asset of the Applicant.

28. It was further submitted that the Applicant has failed to exercise its rights under section 52 of the Code within the prescribed time limit. Hence according to Regulation 21A of IBBI (Liquidation Process) Regulations, said amount becomes part of liquidation estate.

29. Considering the submissions advanced by the parties on both sides, the questions that arise for determination are –

*I. Whether the refund of wrongly invoked bank guarantee amount received from KEC, exclusively belongs to the Applicant and should be kept outside the liquidation estate?*

*II. Whether the Liquidator was justified to distribute the refund amount to all creditors as per Section 53 of the Code.*

30. The Claims of the '**Applicant**' were admitted by the Resolution Professional ('**RP**') as Secured Financial Creditor for a total sum of Rs.99,71,76,589/- (Rs. Ninety-Nine Crores Seventy-One Lakhs Seventy-Six Thousand Five Hundred Eighty Nine only).

31. It was submitted that the Applicant, on request of the Corporate Debtor, had issued Bank Guarantees against Advance payment, for a sum Rs.2,00,00,000/- (Rupees Two Crores Only) in favour of KEC International Limited which was wrongly invoked during subsistence of moratorium.

32. Subsequently, after the Corporate Debtor was ordered for liquidation on 14.08.2020, the Applicant submitted its claim in Form D for an amount of Rs.200,16,72,466.12 which included the encashed and unexpired bank guarantees.

33. After the efforts of the Liquidator, KEC refunded back Rs. 1,83,90,060/- towards wrongly invoked guarantee amount on 24.09.2021, (one year after the commencement of liquidation order). The Applicant's pleaded case is that such amount received from beneficiary of the bank guarantee should be kept outside liquidation estate as the Applicant is a secured creditor and had not relinquished its right over it. The Liquidator submitted that the Applicant failed to exercise its rights under section 52 of the Code within prescribed time line of thirty days and the said refunded amount is part of liquidation estate and

accordingly distributed among the creditors as per Section 53 of the Code.

34. Before delving into this controversy first it needs to be examined whether the Applicant has 'Security Interest' over the amount received back from KEC.
35. We note that Section 3(31) defines security interest which is as follows:

*31 “**Security interest**” means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes **mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person.***

36. It would now be important to refer to the claim form filed by the Applicant on 14.09.2020 with the Liquidator. The extract of Form D is reproduced herein under:

*From*

*Union Bank of India*

*Stressed Asset Management Vertical*

*Veena Chambers,*

*21- Dalal Street, Fort,*

*Mumbai- 400 001*

*E-mail: [samvmumbai@unionbankofindia.com](mailto:samvmumbai@unionbankofindia.com)*

*Subject: Submission of proof of claim in respect of liquidation of EMI Transmission Limited under the Insolvency and Bankruptcy Code,2016*

*Madam/ Sir*

*Union Bank of India hereby submits this proof of claim in respect of the liquidation of EMI Transmission Limited. The details for the same are set out below:*

1.	<i>Name of Financial Creditor (If an incorporated Body provide identification number and proof of incorporation, if a partnership individual provides identification record of all the partners or the individual)</i>	<i>Union Bank of India CIN: U99999MH1919PTC000615 PAN: AAACU0564G</i>
2.	<i>Address and email of Financial Creditor for correspondence</i>	<i>Stresses Asset Management Vertical Veena Chamber, Mezzanine Floor, 21- Dalal Street Fort, Mumbai- 40 001. samvmumbai@unionbankofindia. com</i>
3.	<i>Total amount of claim, including any interest, as at the Liquidation commencement date and details of nature of claim (Whether term loan, secured, Unsecured) (As on 17.08.2020)</i>	<i>Principle: Rs.134,78,33,038.90 Interest: Rs.63,84,46,576.22 Bank Guarantee [Unexpired]: Rs.1,49,62,462.00 Other Expenses: Rs. 4,30,389.00 Total: Rs.200,16,72,466.12 [Rupees Two Hundred Crore Sixteen Lakh Seventy-Two Thousand Four Hundred and Sixty-Six, Twelve Paisa].</i>
4.	<i>Details of Documents by reference to which the debt can be sustained</i>	<i>As detailed hereunder:</i>

8.	<i>Details of any security held, the value of the security, and the date it was given</i>	<i>As detailed hereunder</i>	
<p><i>Primary Security</i></p> <p><i>Hypothecation of stocks of RM, semi-finished, goods, stores &amp; spares, packing materials &amp; Book debts ranking pari-passu with consortium banks.</i></p> <p><i>Collateral Security</i></p> <p><i>Pari-Passu charge on P&amp;M &amp; other immovable assets such as land &amp; Building assets Excluding Vehicles.</i></p> <p><i>Personal Guarantee:</i></p>			
<i>Sl. No</i>	<i>Name of the Guarantor</i>	<i>PAN</i>	<i>Designation</i>
1.	<i>Shri Sanjiv Rasiklal Sheth</i>	<i>ALWPS0001</i>	<i>Executive Vice-Chairman</i>
2.	<i>Smt. Krishna Rasiklal Sheth</i>	<i>AAYPS3776P</i>	<i>Whole time Director</i>
<i>Corporate Guarantee: Nil</i>			
8A	<i>Whether Security interest relinquished</i>	<i>YES/NO</i>	

37. From the perusal of the claim form, it can be clearly ascertained that:

- **Primary Security** is:

Hypothecation of stocks of RM, semi-finished goods, stores & spares, packing materials & Book debts ranking pari-passu with consortium banks

- **Collateral Security** is:

Pari-Passu charge on P&M & other immovable assets such as land & Building assets Excluding Vehicles, Personal Guarantee.

38. Going by the Form D, the primary security of the Applicant covers Stock and Book Debt as follows:

- Stock of RM;
- Stock of semi-finished;
- Stock of goods;

- d. Stock of Stores & spares;
- e. Stock of Packing materials; &
- f. Book debts

Wrongly invoked Guarantee amount and recoverable from beneficiary, can neither be termed as Stock nor Book debts. By no stretch of imagination refunded guarantee amount can be covered under primary security of the Applicant.

39. Similarly, collateral security of the Applicant is over Plant & Machinery and other immovable assets such as land & Building but excluding Vehicles. Thus, the recoverable/refunded guarantee from the beneficiary cannot be covered under collateral security.
40. Thus, this Tribunal is unable to agree to the submissions of the Applicant that amount receivable/ received from KEC was a secured asset of the Applicant which was liable to be kept outside liquidation estate.
41. Coming to the next point, even for the sake of argument if it is assumed that the Applicant has security interest over the amount receivable from KEC, then it needs to be examined whether the Applicant made any efforts to realize its security interest within the prescribed timeline or not. We note the conduct of the Applicant that despite subsistence of moratorium, it had released the guarantee amount to KEC.
42. In ***Rajendra Prasad Tak (Liquidator) v. Mahanadi Coalfield Ltd. and Anr., Company Appeal (AT) (CH) (Ins) No.60/2024*** decided on 25.07.2025 the Hon'ble NCLAT held that when the bank guarantee is invoked, only the margin money kept with the bank for issue of bank guarantee, remains with the financial institution. Further when a bank guarantee expires without being invoked, then the margin money reverses back to the borrower. The relevant extract is set in below:

*“21. Hence, we endorse the view that the margin money is a contribution only, towards securing the Bank Guarantee, that it remains with the Bank, as long as the Bank Guarantee is alive, that if the Bank Guarantee expires without being invoked, the margin money reverses back to the Borrower and in case, the Bank Guarantee is invoked by the beneficiary, the margin money goes towards the payment of the amount guaranteed by the said Bank Guarantee to the beneficiary and nothing remains with the Financial Institution, which can be reversed to the Corporate Debtor.”*

43. It can be discerned from the facts, that the Applicant released the guarantee amount without verification of subsistence of Moratorium and included such amount in the claims filed with the Liquidator. The Applicant took no steps to realise the so-called security interest over the recoverable amount from KEC.

44. At this juncture, we may refer to Sections 36 and 52 of the IBC and Regulation 21A of IBBI (Liquidation Process) Regulations 2016 [referred to as the **Liquidation Regulations**] which are reproduced hereinunder:

Section 36: Liquidation Estate.

*36. (1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.*

*(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.*

*(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following: —*

*(a) xxx*

*xxxx*

***(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;***

Section 52: Secured Creditor in Liquidation Proceedings

(1) *A Secured Creditor in liquidation proceedings may:*

*a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or*

*b) realise its security interest in the manner specified in this section.*

(2) *Where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.*

Regulation 21A: Presumption of security interest

21A. (1) *A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:*

***Provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.***

45. Looking at the above sections, it can be seen that the liquidator shall form liquidation estate of all the assets of the Corporate Debtor including any amount receivable from any party. Indisputably, amount recoverable from KEC is an asset of the Corporate Debtor and unless a secured financial creditor exercises its right over it under Section 52 the same is part of liquidation estate. However, if a Secured Creditor chooses to realise its security interest under Section 52 then said asset

has to be kept outside liquidation estate. Further, by virtue of Regulation 21A of the Liquidation Regulations if a secured creditor does not intimate its decision within 30 days from the liquidation commencement date then such asset shall be presumed to be part of liquidation estate.

46. In the present case the conduct of the Applicant shows that despite subsistence of moratorium, it had carelessly released the amount of invoked bank guarantee issued against Advance payment which was not a performance guarantee. The Applicant, thereafter took no steps to realise the amount from KEC.
47. It is also noted from the claim form that at the time of filing of the claim, the Applicant has not answered Entry No. 8A which states as follows –

8A	Whether Security interest relinquished	YES/NO
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From the above table it can be seen that the Applicant has neither selected Yes nor selected No. It indicates that the Applicant had no intention to realise the security interest.

48. It is explicit from the language of the Code that the decision to realise its security interest shall be intimated within 30 days of Liquidation commencement date, or else it shall be presumed to be a part of the Liquidation estate. The Applicant has not intimated its decision within 30 days from the liquidation commencement date to realise the security interest as prescribed under Regulation 21A of the Liquidation Regulations. Therefore, after expiry of 30 days, the assets of the Corporate Debtor automatically became part of Liquidation estate.
49. The Hon'ble NCLAT in the case of ***Dhanlaxmi Bank Ltd vs Techno Fab Manufacturing Ltd. & Ors Company Appeal (AT) (Ins) No. 777 of 2021*** has observed as follows:

3. *It is further submits that Sub Regulation (2) of Regulation 21-A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provides that a secured creditor has to realize its security interest in time bound manner and has to relinquish the security interest to the liquidator within 90 days from the liquidation commencement date and the secured creditor shall pay the excess of the realized value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date. Sub Regulation (3) of Regulation 21 provides that where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.*

4. *In the present case, the order of liquidation was passed on 05.09.2018, three years has been lapsed and the liquidation proceeding could not be completed and after granting ample opportunity the Appellant has failed to realize its security interest. Therefore, Ld. Adjudicating Authority has rightly directed the Appellant to handover the asset in possession back to the liquidator within 7 days.*

5. *We have gone through the impugned order and relevant provisions. We find no legal flaw in the impugned order. Thus, the Appeal is dismissed summarily.*

50. The Hon'ble NCLAT, in the case of **Small Industries Development Bank of India versus Shri Vijender Sharma Company Appeal (AT) (Insolvency) No. 1027 of 2021**, held that it is mandatory to follow Regulation 21 (1) A.

*21. It thus becomes quite clear that compliance of regulations 2 (ea), 2-A, 21-A and 37 of the Liquidation Process Regulations and Section 52/53 of the IBC are absolutely necessary even if the secured creditor proceeds to realise its security interest.*

51. In view of the above discussion question (I) is answered in negative i.e. the amount refunded by KEC forms part of liquidation estate of the Corporate Debtor and does not exclusively belong to the Applicant.
52. By way of Additional Affidavit dated 16.04.2024 the Applicant has made additional submission that the said amount of Rs. 1,83,90,060/- refunded back from KEC ought to have been remitted back to its Original Source rather than being distributed among the stakeholders in the course of liquidation. It has already held that the amount of refund received from KEC towards wrongly invoked bank guarantee formed part of the liquidation estate therefore all secured creditors have to be treated as per the Section 53 of the Code. There is no objection taken by the Applicant about the quantum of the amount distributed or the *inter-se* distribution among the creditors. Hence this Tribunal holds that the liquidator was justified in distributing the said amount to the secured creditors as per Section 53 of the Code. Accordingly, Question (II) is answered in affirmative.
53. In result, **I.A. 43 of 2022** is dismissed.

**SD/-**

**Hariharan Neelakanta Iyer**  
**Member (Technical)**

/Apurva/

**SD/-**

**Lakshmi Gurung**  
**Member (Judicial)**