THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-I

IA 2396 OF 2026

Section 60(5) of the Insolvency and Bankruptcy Code, 2016

NIRMAL UJJWAL CREDIT CO-OPERATIVE SOCIETY LTD

...**Applicant**

V/s

INDIAN BANK & ORS.

…**Respondent**

In the matter of

COMPANY PETITION (IB) NO. 1318 OF 2022

AXIS BANK LIMITED

…Petitioner

V/s

MORARJEE TEXTILES LIMITED

…Respondent

Order delivered on: 06.08.2026

***Coram**:*

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Adv. Aniruth G. Purushothaman
For the Respondent No.1	:	Adv. Deep Roy a/w Adv. Adv. Shrishti Agnihotri
For the Respondent No.3	:	Adv. Dhrupad Vaghani a/w Adv. Narpat Singh

ORDER

1. This Interlocutory Application is filed by Nirmal Ujjwal Credit Co-operative Society Limited ("Applicant") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC") read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("Rules") seeking directions for release and return of the Original Earnest Money Deposit Bank Guarantee bearing No. 36600GI3D2403469 dated 05.09.2024 for an amount of Rs.5,00,00,000/- furnished by the Applicant during the Corporate Insolvency Resolution Process ("CIRP") of Morarjee Textiles Limited ("Corporate Debtor").
2. In the case of Corproate Debtor, CIRP was commenced on 09.02.2024 appointing Respondent No. 3, Mr. Raj Sethia as Interim Resolution Professional who was latter confirmed as Resolution Professional ("IRP/RP"). Pursuant thereto, RP invited Expression of Interest from the Prospective Resolution Applicant(s) ("PRA") vide an advertisement published on 1.5.2024 in the Economic Times (all India Editions)and Loksatta (all Maharashtra Editions), and thereafter a revised Form G was published on 23.05.2024 after approval of CoC.
3. The Applicant expressed its intent to participate for resolution of the corporate debtor. On 23.06.2024, the RP circulated a provisional list of PRAs, which included the Applicant. Subsequently, on 02.07.2024, the RP issued the final list of PRAs, again including the Applicant. and was shortlisted.
4. In accordance with Section 25(2)(h) of the Code, the RP has invited Resolution Applicant(s) who fulfil the minimum qualification criterion set out therein to

submit Resolution Plan(s), and issued a Request for Resolution Plan ("RFRP") dated 2.7.2024 inviting Resolution Plans from shortlisted PRAs.

5. The Applicant had furnished the aforesaid Bank Guarantee as Earnest Money Deposit in accordance with the Request for Resolution Plan ("RFRP") issued by Respondent No. 2 Union Bank of India in favor of Respondent No. 1 Indian Bank (SAM large Branch) during the CIRP.
6. The Applicant was disqualified from participating in the resolution process, and the said disqualification was challenged before this Tribunal by an Application IA 880 of 2025, and this Tribunal sustained the disqualification of the Applicant vide order dated 09.04.2025, which was later upheld by Hon'ble NCLAT and thereafter before the Hon'ble Supreme Court ultimately came to an end upon withdrawal of the Civil Appeal by the Applicant before the Hon'ble Supreme Court on 09.04.2026.
7. Thereafter, the Applicant is stated to have sent an email dated 07.03.2026 to RP intimating that due to considerable delay, the Applicant had decided to not proceed with its interest in the resolution of the Corporate Debtor and requested Respondent No.3 to refund the EMD of Rs. 5,00,00,000/- (Rupees Five Crores Only) in the bank account specified therein.
8. Thereafter, the Resolution Plan submitted by Shriniwas Spintex Industries Private Limited was approved by CoC on 4/5th February, 2025, and thereafter by this Tribunal on 11.05.2026.
9. On 03.06.2026, Respondent No.2 informed the Applicant that the Original Bank Guarantee had been presented for invocation/encashment, and the Applicant immediately objected to such action and called upon the RP to release and return the Bank Guarantee, however, it is stated that no corrective action was taken.
10. The Respondent No. 1 and Respondent No. 3 filed their reply and all the parties advanced their submissions. Since, Respondent No. 2, issuer bank of BG, was only a proforma party, this Tribunal proceeded further in absence of their reply.

11. It is case of the Applicant that the proposed invocation of the Bank Guarantee is contrary to the terms of the RFRP, Regulation 36B(4) of the CIRP Regulations, settled principles governing Earnest Money Deposits of unsuccessful Resolution Applicants and the express terms governing refund thereof.
12. Per contra, it is submitted by Respondent No. 1 that the Applicant misrepresented that it was an eligible resolution applicant for submitting a resolution plan for the Corporate Debtor while it not eligible to carry on business other than same line of business in terms of Section 64(d) of the Multi-State Co-operative Societies Act, 2002, and the Applicant, having submitted its expression of interest and resolution plan pursuant to the RFRP, accepted and undertook to comply with all terms, conditions, obligations and consequences stipulated therein, including those relating to eligibility, disclosures, representations, forfeiture and invocation of earnest money deposit/ bank guarantee/ performance security, as applicable, accordingly, Respondent No. 1 defended its act of forfeiting EMD furnished by the Applicant in terms of Clause 1.15.2.1 and Clause 1.19.3 of the RFRP.
13. RP has also defended forfeiture of EMD of applicant relying upon Clause 2.5 of RFRP which provides scenarios in which the Resolution Plan would be considered "non-responsive" and entitle the RP to forfeit the EMD. He has also relied upon Clause 1.17.1.2 and Clause 1.19.3 of RFRP in this relation.
14. It is relevant to refer to the Clause(s) of RFRP and Regulation 36B of CIRP Regulations, which are reproduced hereunder for the sake of understanding :

> ***1.15.2.1*** *Indian Bank, in its capacity as the member of the CoC(Designated Bank"), shall have the right to invoke the Earnest Money Deposit/Earnest Money Deposit Bank Guarantee on behalf of the Corporate Debtor, until a period of 12 (twelve) months from the last date of the Earnest Money Deposit Validity, by issuance of a demand to the issuing bank to invoke the Earnest Money Deposit Bank Guarantee, by appropriating such cash deposit. The Earnest Money Deposit can be*

invoked and appropriated at any time in the following exceptional circumstances which may arise:

a) if the Resolution Plan is withdrawn before CoC approval;

b) any of the conditions under this RFRP or the requirements of this RFRP or the terms of the LOI are breached or not met by the relevant Resolution Applicant or in case Resolution Applicant is found to have made or submitted any false or incorrect statement, record or information; or

c) if the Resolution Applicant fails to extend the validity of the Earnest Money Deposit, if submitted in the form of a Bank Guarantee, as may be required by the RP (acting on the instructions of the CoC); or

d) there has been any misrepresentation on the part of the Resolution Applicant in the Undertaking provided under Format IIIA of this RFRP; or

e) if the Resolution Plan is found non-responsive;

f) the Resolution Applicant is found to be ineligible to submit the Resolution Plan under Section 29A of the Code or the Resolution Applicant is found to have made a false or misleading declaration of eligibility under Section 29A of the Code; or

g) any non-compliance with the Resolution Plan Process or lateral change by the Resolution Applicant to the Resolution Plan submitted by it; or

h) The Resolution Applicant fails to renew/extend the Earnest Money Deposit in the form of a bank guarantee at least 30 days prior to the date of its expiry.

1.15.2.2. *The Earnest Money Deposit of the Resolution Applicant who has not been selected as the Successful Resolution Applicant, shall be returned within 90 days of the date of declaration of the Successful Resolution Applicant or within 7 of the date on which the certified true* *copy of the liquidation order passed by the Adjudicating Authority is received by the RP, whichever is earlier.*

1.17.1.2. *The Resolution Plan shall includes*

a) information and details of the Resolution Applicant and all connected persons" (as defined under Regulation 28 of the CIRP Regulations, as specified under Regulation 38 of the CIRP Regulations;

b) Employee related statutory payments on super priority;

c) payment of Corporate Insolvency Resolution Process cost and amounts due to operational creditors on a priority basis;

d) specific sources of funds that shall be used for the payment of the Insolvency Resolution Process Cost in priority to the repayment of any other creditors of the Company;

e) specific sources of funds that shall be used for the payment of the Operational Creditors in a manner that the amount received by the Operational Creditors is not less than the amount mandatorily required to be paid under Section 30(2)(b) of the Code;

f) specific sources of funds that shall be used for the payment of the liquidation value due to dissenting members of the CoC and provide that such payment is made before any recoveries are made by the members of CoC who voted in favour of the Successful Resolution Applicant;

g) include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the Corporate Debtor;

h) include a statement giving details if the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure in implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past;

i) term of the Resolution Plan and its implementation schedule and the manner of payment to the financial creditors;

J) stipulate mechanism regarding management and control of the affairs of the Company post the approval of the Resolution Plan and post the Transfer Date till the implementation of the Resolution Plan is complete and demonstrate that the Resolution Applicant has the capability to implement the Resolution Plan;

k) manner of implementation and supervision of the Proposed Transaction

1) manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the Resolution Plan and the manner in the proceedings, if any, from such proceedings shall be distributed;

m) A resolution plan hall demonstrate (a) that it addresses the cause of default; (b) that it is feasible and viable (c) it las provisions for its effective implementation; (d) it has provisions for approvals required and the timeline for the same, and (e) the resolution applicant has the capability to implement the resolution plan;

n) declaration to the effect that the Resolution Plan is not in contravention of provisions of the Applicable Law;

o) affidavit stating that he is eligible under Section 29A of the Code; and

p) conforms to all the requirements as specified by the IBBI.

1.19.3 *If the Resolution Applicant conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in its Resolution Plan, in any manner whatsoever, the RP/ CoC reserves the right to reject such Resolution Plan and / or cancel the Letter of Intent (if issued) and forfeit the Earnest Money Deposit. The Resolution*

Applicant shall be solely responsible for such disqualification based on its declarations in the Resolution Plan.

15. It is noted that Regulation 36B(4) of the CIRP Regulations provides that "*The request for resolution plans shall not require any non-refundable deposit for submission of or along with resolution plan*", and in the present case, clause 1.15.2.2. of RPRP also contemplates refund of the Earnest Money Deposit of the Resolution Applicant who has not been selected as the Successful Resolution Applicant.

16. Respondent no. 1 has relied upon decision in case of ***Jubilee Metal Pvt. Ltd. v. Mr. Surendra Raj Gang RP of Metenere Ltd. and Anr.*, *(2023) ibclaw.in 827 NCLAT*,** wherein it is held that "*Present is not a case where CoC has passed Resolution dated 21.12.2022 in reference to Regulation 36B (4-A). The minutes of the meeting specifically refers to clause 13.2 of the RFRP. The action of the CoC is fully covered by clause 13.2 of the RFRP and there is no occasion to resort to Regulation 36B (4-A) of the Regulation. Regulation 36B (4F) only contemplate one contingency that where performance security shall stand forfeited but the said provision does not exclude forfeiture of performance security in other conditions as contemplated in RFRP. We, thus, are of the view that the decision of the CoC for forfeiting the performance security is in accordance with RFRP.* "

17. It is noted that the said decision was rendered in case of breach of conditions under the LoI or Resolution Plan or the Definitive Agreements by Successful Resolution Applicant after approval of its Resolution Plan by CoC, but before the approval by the Adjudicating Authority. In that case, the Hon'ble NCLAT observed that it is a case of sale of Resolution Plan approved by the CoC to third party and held that the Resolution Applicant has violated the addendum of the Resolution Plan as well as undertaking as given in the LoI. The case in hand deals with forfeiture of EMD submitted by an Unsuccessful Resolution Applicant.

18. It is clear that clause 1.19.3 of RFRP vests powers in RP/Respondent No. 1 to forfeit EMD if the Resolution Applicant conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in its Resolution Plan. Further, clause ***1.15.2.1*** Indubitably, the Applicant falls with the definition of "Resolution Applicant" as contained in RFRP.
19. It is case of Respondents that the applicant had misrepresented on two counts i.e. (i) its eligibility u/s 29A of IBC, and (ii) its competence to carry on business as the Corporate Debtor was engaged into in terms of its Bye-laws. This tribunal, vide its order dated 09.04.2025 held that no disqualification can be attached to the Applicant Society in view of Section 29A(j) read with Section 29A(e) of the Code, and the said decision was not challenged. Accordingly, there can not be a case of any misrepresentation or misleading statement in relation thereto.
20. It is not disputed that n the present case, the bye-laws of the Applicant society was placed on record, and the said bye-laws only formed the basis of conclusion of RP that the applicant is not entitled to carry on the business, the corporate debtor is engaged in, a view which was upheld by this tribunal, Hon'ble NCLAT and finally by Hon'ble Supreme Court (even though the civil appeal was withdrawn by the Applicant, the Hon'ble Supreme Court considered it desirable to decide the issue having regard to the importance of the issue involved in the present litigation).
21. It was consistent stand of the Applicant that it is eligible to carry on the business the Corporate Debtor is engaged into, though its stand was rejected by every forum after interpretation of relevant provisions of Multi-State Co-operative Societies Act, 2002, however, it is relevant to notice that the claim of the applicant in relation to its eligibility was dependent on the interpretation of the words "*same line of business*" used in Section 64(d) of Multi-State Co-operative Societies Act, 2002, and the objection of the application against RP's decision required extensive deliberation at each forum to decide the same.

22. This Tribunal recorded at Para 4.2.1 of its Order dated 9.4.2025, upholding RP's decision in relation to disqualification of the Applicant on ground of its competence to carry on the business, the Corproate Debtor was engaged into, the discussion recorded in the minutes of the CoC meeting held on 29.1.2025. The relevant part of the minutes reads as

> "*Further, the CoC legal counsel apprised the CoC that they have also included observation in their report related 1o permissibility for acquisition of textile unit as per bylaws of NUCCS. Additionally, the CoC counsel highlighted that the by-laws state that the funds of the society shall be used to achieve the objects of the society including providing financial assistance (o certain section of the society and to participate in agro-related business. The representative of Indian Bank enquired whether the agro-related business could include the textile business. The RP legal Counsel shared the objects listed by NUCCS in its by-laws and it was clarified that the business of MTL would not fall into the agro-related business category. Upon detailed deliberation it was suggested and agreed that the RP legal Counsel and CoC legal counsel would get on a joint call to arrive at a conclusion on the participation of NUCCS given the bye laws and other relevant laws currently in place. It was also suggested by the CoC that RP may consider obtaining opinion Jfrom an independent legal counsel on this matter to obtain abundant clarity on this subject.*"

23. It is also noted that that Hon'ble NCLAT has observed at Para 89 that "*…….CoC, indeed had done its due diligence, after obtaining various legal opinion in holding that Appellant was not found eligible to submit Resolution Plan………*" It is also relevant to note the statement of Hon'ble Supreme Court in para 1 that "*……..we also clarified that having regard to the importance of the issue involved in the present litigation we would be looking into the facts of the present appeal, the submissions canvassed on either side, the provisions of IBC and other*

relevant materials only with a view to explain the position of law or rather, the principles governing the pivotal issue in question without returning any findings on the merits of the appeal."

24. It emerges from the above that the issue in relation to the eligibility of the Applicant in terms of Section 64(d) of Maharashtra Co-operative Societies Act was a legal issue, which can not said to be ex-facie false or misleading. In the resolution process, a resolution plan submitted by a Resolution Applicant has to go through three layer scrutiny i.e. RP, CoC and this Tribunal. Hence, it can not be said that the representation by Application in relation to its eligibility to carry on business, the corporate debtor was engaged in, were false or misleading to induce RP.
25. Even if such representation may fall under the category of innocent misrepresentation, it can not be said that the innocent misrepresentation was intended to induce the RP to vet its Resolution Plan for further consideration. Further, the said resolution plan, even if the applicant is eligible, is required to be approved by CoC in its commercial wisdom.
26. On the contrary, the records indicate that RP had noticed this issue on the basis of material placed by the applicant before it at first instance and had sought clarifications also in relation from the Application. Further, the said issue was required deliberation by CoC and opinion from legal experts before declaring the applicant ineligible. Accordingly, we are of considered view, it can not be said that the applicant had misrepresented or made a misleading statement in its Resolution Plan in relation to its eligibility, which was always subject matter of detailed scrutiny at the end of RP.
27. It is also contended by the Respondent No. 1 & RP that the litigation before this Tribunal, and thereafter before Appellate Authorities in relation to eligibility issue of applicant wasted considerable time in the resolution process, hence, he ought to be made liable to compensate by way of forfeiture of EMD. It is legal right of every participant to challenge the decision of RP or any authority in the

CIRP process, accordingly, time consumed in availing statutorily vested rights can not result into a conclusion that the delay in CIRP process was attributable to the applicant.

28. In view of foregoing discussion, we are of considered view that the Bank Guarantee representing EMD amount could not have been forfeited in terms of clause 1.15.2.1 or clause 1.19.3 of RFRP. Accordingly, the original BG be returned to the Applicant. In case, the said BG has been encashed by Respondent No. 2 and proceeds thereof have been remitted to Respondent No. 1 or RP, the same are liable to refunded back forthwith within one week.

29. In terms of above, IA 2396 of 2026 is allowed and disposed of.

-Sd/-	**-Sd/-**
Prabhat Kumar	**Sushil Mahadeorao Kochey**
Member (Technical)	Member (Judicial)