NATIONAL COMPANY LAW TRIBUNAL

COURT-V, MUMBAI BENCH

3. IA/5149/2024 C.P. (IB)/644(MB)2020

IN THE MATTER OF

KALINDI GREEN VENTURES

VS

DK INFRASTRUCTURE PVT LTD

U/s 9 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 07.09.2026

CORAM:

SH. VINAY GOEL MEMBER (J)	SH. CHARANJEET SINGH GULATI MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant/RP: - Adv. Ayush J Rajani a/w Adv. Khushboo Rajani i/b AKR Legal, (VC)

For the Respondent: -

ORDER

IA/5149/2024: - The above **IA/5149/2024** is listed for pronouncement of orders. The same is pronounced in open court today vide a separate order.

Sd/- VINAY GOEL Member (Judicial)	Sd/- CHARANJEET SINGH GULATI Member (Technical)

//Anmol//

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-V

IA/5149/2024
IN
CP(IB)/644(MB)2020
(Under Section 14 of the Insolvency and Bankruptcy Code, 2016 read with Section 60(5) and Section 74 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Mr. Jayanti Lal Jain
Registration No. IBBI/IPA-001/IP-P01792/2019-20/12845
Interim Resolution Professional of
DK Infrastructure Private Limited,
708, Raheja Centre, 7th Floor, Nariman Point, Mumbai City, Maharashtra, 400021

…. Applicant

-Vs-

Mr. Pranaya Prusty
DSMG-Business Banking Group (SME) / Head Stress Assets
ICICI Bank Limited, ICICI Bank Tower,Bandra Kurla Complex, Mumbai-400051.

…Respondent

IN THE ORIGINAL MATTER OF:
Kalindi Green Ventures
…Operational Creditor
Versus
DK Infrastructure Private Limited

…Corporate Debtor

***Order delivered on:* 07.09.2026**

Coram:

Sh. Vinay Goel	Sh. Charanjeet Singh Gulati
Member (Judicial)	Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: Adv. Ayush Rajani a/w Adv. Anurag Mishra, Adv. Khushboo Rajani i/b AKR Legal (PH)

For the Respondent in IA/5149/2024: Aditi Biswas i/b Vidhii Partners (VC)

O R D E R

Per Coram

1. The present Application has been filed by the Resolution Professional of M/s DK Infrastructure Private Limited under Section 14 of the Insolvency and Bankruptcy Code, 2016 read with Section 60(5) and Section 74 of the Insolvency and Bankruptcy Code, seeking the following prayers: -

    1. *Consider the present IA of 2024 under provision of Section 14 read with Section 60(5) and Section 74 of the Code;*

    2. *Direct Respondent / CoC Member to remit the balance margin money of the Corporate Debtor amounting to Rs.1,22,57,258/- in to the account of the Corporate Debtor maintained by the Applicant /Resolution*

Professional details of the said bank account are as follow:

Name of the Bank	ICICI Bank
Name of the Branch	Vile Parle
Account in the name of	DK Infrastructure Private Limited
Account Number	021105008970
IFSC Code.	ICIC0000211

3. Issue such other orders as may be necessary in the matter.

<u>Brief facts of the case: -</u>

2. The Applicant stated that the Corporate Debtor, DK Infrastructure Private Limited, was admitted into CIRP vide order dated 17.04.2023 in Company Petition No. IB/644/2020, pursuant to which the Applicant was appointed as Resolution Professional, and that the Respondent's claim dated 13.05.2023 was duly admitted.

3. The Applicant stated that the Respondent was holding FDRs of the Corporate Debtor as margin money for Bank Guarantees and, despite requests dated 28.07.2023, 29.07.2023, 07.08.2023 and 18.08.2023, had retained a margin of Rs.1,32,19,458/- against only two outstanding Bank Guarantees, Nos. 0544BGR0078220 and 0544BGR0078320, aggregating to Rs.9,62,200/-.

4. As the stipulated margin was 35%, amounting to Rs.3,36,770/-, the Applicant contended that an excess amount of Rs.1,28,82,688/- was being retained and, without prejudice, requested release of Rs.1,22,57,258/- after permitting retention of margin up to 100% of the outstanding Bank

Guarantees. Despite further reminders dated 28.08.2024 and 31.08.2024, the Respondent neither released the excess margin nor responded. The Applicant therefore contended that continued retention of the Corporate Debtor's funds was contrary to the IBC and sought directions for release and remittance of Rs.1,22,57,258/- to the CIRP account.

5. The Respondent filed its reply stating that the present application was based on a misconceived apprehension that the Bank had appropriated amounts under the Bank Guarantees during the moratorium in violation of the Insolvency and Bankruptcy Code, 2016.

6. The Respondent contended that, on a conjoint reading of Sections 3(31) and 14(1)(c) of the Code, a Bank Guarantee does not constitute a "Security Interest" and is therefore outside the scope of the moratorium, which applies only to actions for foreclosure, recovery or enforcement of security interest created by the Corporate Debtor in respect of its property.

7. It was stated that the Corporate Debtor had availed working capital facilities of Rs.260 million from the Respondent Bank since around 2009, renewed from time to time, including vide Credit Arrangement Letters dated 22.01.2021 and 24.08.2022, and was subsequently admitted into CIRP vide order dated 17.04.2023.

8. The Respondent further stated that the Bank Guarantees bearing Nos. 0544BG00086914, 0544BG00086714, 0544BGR0041619, 0544BGR0139619 and 6322NDDG00009922 stood closed, while Bank Guarantees bearing Nos. 0544BGR0078220 and 0544BGR0078320

remained live, with the total amount of the Bank Guarantees being Rs.2,05,23,502/-.

9. It was further contended that the margin money maintained with the Bank did not constitute an asset or security interest of the Corporate Debtor for the purposes of Section 14, and that a lien of Rs.2,12,81,240/- was also existed on the concerned account pursuant to a notice dated 08.06.2023 issued by the VAT Department, Mumbai.

10. The Respondent stated that the appropriation of the margin money was made in accordance with the specific terms of the Credit Arrangement Letter dated 24.08.2022, which provided that the fixed deposit margin relating to Bank Guarantees expiring during the relevant period would not be released but would be utilised towards reduction of the fund-based exposure, with recovery of the balance Cash Credit amount after expiry of all outstanding Bank Guarantees.

11. Accordingly, the Respondent contended that neither the Bank Guarantees nor the margin money appropriated by it was protected under the moratorium or could be treated as property of the Corporate Debtor, and therefore sought dismissal of the application with costs.

<u>Analysis and Findings</u>

12. We have heard both sides and also gone through the records. This is an application filed by the Resolution Professional seeking directions to the Respondent Bank to remit an amount of Rs. 1,22,57,258/- lying with the

Respondent Bank as margin money towards certain Bank Guarantees issued by the Bank at the behest of the Corporate Debtor in favour of the beneficiaries.

13. It is the case of the Applicant that though the Bank had issued many Bank Guarantees, except for two Bank Guarantees, all others have expired during the Corporate Insolvency Resolution Process. Therefore, the Bank has no right to retain the margin money in respect of the expired Bank Guarantees. It is further pleaded that though the Bank is entitled to retain only 35% of the margin money for live Bank Guarantees, the Bank may retain 100% of the margin money in respect of the outstanding Bank Guarantees, and the Bank is liable to remit the amount as claimed.

14. Whereas, the Bank has taken multifarious defences, contending that the Bank Guarantee does not constitute security interest and is outside the scope of the moratorium. The Bank has further submitted that there is a lien of the VAT Department, Mumbai, on the amount and has ultimately shown its inability and resistance to remit such amount.

15. In fact, no security interest has been created by the Corporate Debtor on the margin money. The margin money was, in fact, deposited as a condition precedent for the sanction of Bank Guarantees. In fact, margin money is a contribution on the part of the borrower seeking a Bank Guarantee, and the margin money remitted with the Bank is under lien as long as the Bank Guarantee is alive. Once the Bank Guarantee is invoked by the beneficiary, the Bank would be able to remit the amount to the beneficiary along with the amount of margin money.

16. The margin money can be utilised by the Bank as a matter of right as per the contract, and in case the Bank Guarantee is not invoked or has lapsed, the borrower/CD would be entitled to the margin money. As such, the Bank has its rights over the margin money in terms of the contract only.

17. At this stage, this Adjudicating Authority would like to quote the relevant portion of the order of the Hon'ble NCLAT in ***Indian Overseas Bank v. Arvind Kumar RP M/s Richa Industries Ltd,*** ***(2020) ibclaw.in 285 NCLAT***:

> *13. The 'margin money' is the contribution on the part of the borrower who seeks 'Bank Guarantee'. The said margin money remains with the Bank, as long as the Bank Guarantee is alive. If the Bank Guarantee expires without being invoked, then the margin money reverse back to the borrower, and in case the bank guarantee is invoked by the beneficiary, the margin money goes towards payment of bank guarantee to the beneficiary, and nothing remains with the financial institutions, which can be reversed to the Corporate Debtor.*

18. Thus, the margin money can be retained by the Bank only to the extent necessary during the subsistence of the live Bank Guarantee and, upon expiry of the Bank Guarantee without invocation, the corresponding margin money is required to be released to the Corporate Debtor.

19. In this case, the Bank issued the following Bank Guarantees in favour of the beneficiaries, and the CD deposited an amount of Rs.1,32,19,458/- as margin money to facilitate the issuance of such Bank Guarantees. Once the Bank Guarantees have lapsed and only two Bank Guarantees are a live, the

Bank has no right to retain any such amount lying as margin money or to adjust the same towards any other liability. The Bank cannot exercise its lien over such amount except in respect of the live Bank Guarantees.

20. Though, as per banking requirements, the Bank is entitled to 35% of the margin money, as the Applicant himself has given liberty to the Bank to retain 100% of the margin money for the live Bank Guarantees, the Applicant can claim remittance of an amount of Rs. 1,22,57,258/- only. Having considered all such submissions, we are of the considered opinion that the Bank is liable to remit an amount of Rs. 1,22,57,258/-.

21. As far as the lien of the VAT Department is concerned, this Adjudicating Authority places reliance on the order of the Hon'ble NCLAT in Commissioner ***of State Tax Department v. Ramchandra Dallaram Chaudhary (Liquidator),*** ***(2024) ibclaw.in 331 NCLAT,*** and the relevant portion of the order is reproduced as under:

> *66. We understand and appreciate that the Appellant during the moratorium period could determine the tax, interest, fine or any penalty which is due, however, the Appellant could not enforce his claims for recovery or levy of interest on the tax due during the period of Moratorium. It has been brought out that the Claims of Assessment Orders passed during the moratorium under Section 14 & 33(5) of the Code, have been rightly considered and admitted as 'Unsecured' Operational Debt. It is significate to take into consideration that the Appellant vide its own letter dated 23.06.2023 acknowledged the fact that for A.Y. 2014-15, 2015-16 & 2016-17, the assessments were carried on during moratorium.*
> *67. It has been brough to notice that the Appellant passed attachment orders on the property of the Corporate Debtor*

> *i.e., 16.10.2018 in alleged and contravention of Section 14 of the Code & Regulation therein, even after order dated 15.06.2023 passed by Adjudicating Authority whereby, the Appellant was directed to lift the attachment within ten days of receipt of such intimation from the Respondent, however, till date, the Appellant continues illegally and unlawfully attachment on the subject property of the Corporate Debtor. This obviously is not in consonance with the law.*
>
> *68. We also find logic in the pleadings of the Respondent that allowing such attachment over property during the subsistence of the moratorium, would undermine resolution of the Corporate Debtor and well prejudice the interests all stakeholders. This is found to be against the spirit of the Code.*

22. In view of the above, this Adjudicating Authority is of the considered view that the VAT Department can exercise its rights in accordance with law by filing its claim before the Resolution Professional. However, any attachment or enforcement of such claim against the property of the Corporate Debtor during the subsistence of the moratorium would be hit by the provisions of Section 14 of the Insolvency and Bankruptcy Code, 2016, and we find no merit in the defence taken by the bank.

23. Accordingly, the Bank is directed to remit the amount of Rs. 1,22,57,258/- to the account of the Corporate Debtor maintained by the Resolution Professional within **30** days, of receipt of this order.

24. In view of the above directions, this Application bearing **IA/5149/2024** is **allowed** and **disposed of**.

25. The Registry is directed to send e-mail copies of this order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.

26. Let the certified copy of this order be issued upon compliance with the requisite formalities.

File be consigned to records.

Sd/-	**Sd/-**
VINAY GOEL	**CHARANJEET SINGH GULATI**
Member (Judicial)	Member (Technical)