NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

2. IA/4684/2024 C.P. (IB)/644(MB)2020

IN THE MATTER OF
KALINDI GREEN VENTURES … Petitioner
Vs
DK INFRASTRUCTURE PVT LTD … Respondent

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

Order Delivered on 09.09.2026

CORAM:

SH. VINAY GOEL
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: Adv. Ayush Rajani a/w Adv. Khushboo Rajani, Adv. Siddharth Etambe i/b AKR Legal, Advocates (VC)

For the Respondent: Adv. Sarvesh Jain (VC)

ORDER

IA/4684/2024- The above IA is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
VINAY GOEL
Member(Judicial)

Sd/-
CHARANJEET SINGH GULATI
Member(Technical)

/Ziyaul/

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-V

IA/4684/2024
IN
CP(IB)/644(MB)2020
(Under Section 14 of the Insolvency and Bankruptcy Code, 2016 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of NCLT Rules, 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. Arvind Mathur
The Executive Engineer,
Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation Ltd.
Division Office: Opp. H. No. 4/481,
RHB Colony Goverdhan Villas,
Sector-14, Udaipur 313001

…RespondentNo.1

Mr. Varun Dagala,
The Assistant Engineer,

Rajasthan Urban Drinking
Water Sewerage and
Infrastructure Corporation Ltd.
Division Office: Opp. H. No.
4/481, RHB Colony Goverdhan
Villas, Sector-14, Udaipur
313001

…Respondent No. 2

Mr. Pradeep Garg,
Project Director - Housing RUDSICO
4, SA-24, Goner, Sector 4,
Jawahar Nagar,
Jaipur, Rajasthan 302004

…Respondent No. 3

Order Delivered on: 09.09.2026

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/4684/2024: Adv. Sarvesh Jain(VC)

I.A. No. 4684 of 2024

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) of the Insolvency and

Bankruptcy Code, and Rule 11 of the National Company Law Tribunal Rules 2016 seeking the following prayers: -

> *1. Consider the present IA of 2024 under provision of Section 14 read with Section 60(5) of the Code and Rule 11 of NCLT Rules, 2016;*
> *2. Pass necessary order directing the Respondents to refund the amount of Bank Guarantee No. 01830100000198 amounting to Rs.87,88,258/ which is already been invoked by the Respondents since the said action of the Respondents are violating the Section 14 (moratorium) of the Code which itself is bad in law;*
> *3. Issue such other orders as may be necessary in the matter.*

Brief facts of the case:

2. The Applicant stated that the Corporate Debtor was admitted into CIRP vide order dated 17.04.2023, pursuant to which the Applicant was appointed as Resolution Professional, and that the Corporate Debtor had been awarded a work order dated 11.09.2015 by the Respondent for construction of 272 flats in 17 towers at Fatehnagar, Udaipur.

3. During CIRP, the Applicant continued the project as a going concern and incurred Rs.1,11,06,124/- towards material, labour and site expenses. While invoices dated 27.09.2023 and 07.03.2024 for Rs.5,11,001/- and Rs.10,76,890/- were paid, the invoice dated 30.03.2024 for Rs.71,78,376/- including GST remained substantially unpaid, with the Respondent disputing the claim and stating that only Rs.2,19,641/- was payable after verification and completion of the work.

4. The Applicant further stated that the Corporate Debtor had furnished Bank Guarantee No. 01830100000198 for Rs.87,88,258/- in favour of the Respondent and, despite his request for extension, the Respondent

invoked the Bank Guarantee vide letter dated 18.07.2024 on the ground of non-completion of the project.

5. The Applicant contended that the invocation and realisation of the Bank Guarantee during the subsistence of the moratorium under Section 14 of the IBC was in violation of the moratorium, despite his request to the Respondent and the Bank to withhold the invocation, and accordingly sought refund of Rs.87,88,258/- realised pursuant to the invocation.

6. The Respondents filed their reply contending that the present application under Sections 14(2A) and 60(5) of the IBC read with Rule 11 of the NCLT Rules was misconceived, premature and not maintainable, as it essentially sought refund of Rs.87,88,258/- realised by encashment of Bank Guarantee No. 01830100000198 on 23.07.2024, prior to filing of the application on 05.08.2024. It was contended that Section 14 does not prohibit invocation or encashment of a bank guarantee and that Section 14(3)(b) excludes a surety in a contract of guarantee to a Corporate Debtor from the moratorium.

7. Reliance was placed on the Insolvency Law Committee Report and the judgments in *U.P. State Sugar Corporation v. Sumac International Ltd.* and *Haryana Telecom Ltd. v. Aluminium Industries Ltd.* The Respondents further contended that the RP had not obtained the requisite CoC approval under Section 28(1)(k) and that the dispute arising from the work order dated 11.09.2015 was governed by the dispute-resolution mechanism under Clauses 23 and 50, and therefore could not be adjudicated as a recovery proceeding under the IBC.

8. It was stated that the Corporate Debtor had failed to complete the construction of 272 G+3 flats within the stipulated period despite extensions and repeated communications, and that the work remained incomplete even after commencement of CIRP, entitling the Respondents to encash the bank guarantee and recover liquidated damages under Clause 2 of the contract.

9. As regards the alleged outstanding amount of Rs.71,78,376/-, the Respondents stated that the amount was never admitted as payable and that, upon joint inspection on 19.06.2024, only Rs.2,19,641.41/- was found outstanding, while liquidated damages were stated to be substantially higher. Reliance was placed on Clause 7 of the work order, under which running payments were provisional and subject to final verification and adjustment.

10. It was further stated that the work had remained stopped for several months and that payment of GST did not amount to acceptance of the invoices or admission of liability. Accordingly, the Respondents contended that the encashment of the bank guarantee and withholding of the disputed running bill were in accordance with the contract and did not violate the moratorium under Section 14, and prayed for dismissal of the application with costs.

<u>Analysis and Findings</u>

11. We have heard the learned counsel for both the parties and perused the material on record.

12. It is the case of the Applicant that the invocation of the Bank Guarantee during the subsistence of the moratorium under Section 14 of the IBC is in violation of the moratorium, and therefore the Respondents ought to refund the amount of Rs.87,88,258/- realised pursuant to such invocation. The Applicant further contends that the Respondents' action of invoking the Bank Guarantee is *mala fide* as the project remained incomplete due to the Respondents' failure to release the outstanding payments.

13. Per contra, it is the case of the Respondents that the invocation and encashment of the Bank Guarantee does not violate the moratorium under Section 14 of the IBC, as Section 14(3)(b) expressly excludes a surety in a contract of guarantee from the purview of the moratorium. The Respondents further contend that the Bank Guarantee was invoked on account of non-completion of the project despite repeated extensions and communications, and that the Applicant is not entitled to any relief.

14. At this juncture, it would be apposite to examine the scope and applicability of the moratorium under Section 14 of the IBC, 2016, particularly in the context of invocation of a Bank Guarantee. For ease of reference relevant provisions are reproduced below:

> ***Section 14: Moratorium***
>
> *(1) Subject to provisions of 1[sub-sections (2), (2A) and (3)], on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: —*
>
> *(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2). ………….

(2A). ………….

(3). The provisions of sub-section (1) shall not apply to –

[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.

<u>Section 3: Definitions</u>

3. In the code unless context requires otherwise:

(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:

Provided that security interest shall not include a performance guarantee.

15. Section 14 of the IBC, 2016, provides for a moratorium upon the commencement of the Corporate Insolvency Resolution Process. Section

14(1)(c) prohibits "any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property". However, Section 14(3)(b) of the Code expressly provides that the provisions of sub-section (1) shall not apply to "a surety in a contract of guarantee to a corporate debtor". Furthermore, the proviso to Section 3(31) of the IBC clarifies that "security interest" shall not include a performance bank guarantee.

16. In the present case, the Bank Guarantee was furnished by the Corporate Debtor in favour of the Respondents through Axis Bank on 28.06.2023, for an amount of Rs.87,88,258/-. Axis Bank, as the surety, undertook to pay the guaranteed amount upon invocation by the beneficiary. The invocation of the Bank Guarantee, therefore, falls within the exception carved out under Section 14(3)(b) of the IBC.

17. The legal position with regard to invocation of bank guarantees during moratorium has also been considered by the Hon'ble NCLAT, New Delhi, in ***National Small Industries Corporation Ltd. v. Sh. Prabhakar Kumar Liquidator and Anr. (Company Appeal (AT) (Insolvency) No. 841 of 2021 decided on 16.10.2023*,** wherein it was held that an irrevocable and unconditional bank guarantee is not affected by the moratorium. The Hon'ble NCLAT observed that the bank, being the surety, undertakes to discharge the liability of the Corporate Debtor and that the assets of the surety are distinct from those of the Corporate Debtor.

> *23."The 'Bank Guarantee' is a 'contract of Guarantee' provided/furnished by the Bank, the 'surety', to perform the 'promise', or 'discharge' the liability, of the third person, being the Corporate Debtor herein, in case of*

*his 'default'." **From the plain reading of Section 14(3)(b) of the IBC, 2016, along with Section 126 of the Indian Contract Act, 1872, it is apparent that the 'Bank Guarantee' given by the Respondent No. 2 to the Appellant is covered by the exclusion given in Section 14(3)(b) and that provisions of Section 14(1) shall not apply to the instant case."***

26. In conclusion, as per the facts of this case, the "Bank Guarantee" provided by the Respondent No. 2/ Bank is held to be covered by the exception provided in provisions of Section 14(3)(b) of IBC, 2016, and the Moratorium prescribed under Section 14(1) of IBC, 2016, shall not apply to its 'Encashment'."

(Bold for Emphasis)

18. Applying the aforesaid legal position to the facts of the present case, we find that the Bank Guarantee in question, being a contract of guarantee furnished by the Bank (surety) on behalf of the Corporate Debtor, falls squarely within the exception carved out under Section 14(3)(b) of the IBC. In view of the above, invocation of the Bank Guarantee by the Respondents does not constitute enforcement against the assets of the Corporate Debtor and is not barred by the moratorium under Section 14(1) of the IBC. The objection raised in this regard is, accordingly, untenable.

19. As regards the Applicant's claim for the outstanding invoice amounting to Rs.71,78,376/- against the work done during the CIRP period, the same has been separately considered and disposed of by this Tribunal in I.A. No. 4669 of 2024 vide order dated 18.08.2026.

20. In view of the facts and circumstances of the case, we are of the considered view that the invocation of the Bank Guarantee did not violate the moratorium under Section 14 of the IBC, and the Applicant is

therefore not entitled to seek refund of the amount so realised. The Application, being devoid of merit, is accordingly liable to be dismissed.

21. Accordingly, I.A. No. 4684 of 2024, is hereby **dismissed**.

22. 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.

23. 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)**