

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-I

Company Application 85 MB 2026

*(APPLICATION UNDER SECTION
280 OF COMPANIES ACT, 2013)*

**KOTAK MAHINDRA BANK
LIMITED**

...Applicant

Versus

ANIL KASHI DROLIA
*(Company Liquidator Brijeel Foods and
Beverages Private Limited)*

...Respondent

Along with

Company Application 88 MB 2026

*(UNDER RULE 11 OF THE NATIONAL
COMPANY LAW TRIBUNAL RULES,
2016)*

ANIL KASHI DROLIA

...Applicant

Versus

**KOTAK MAHINDRA BANK
LIMITED**

...Respondent

In the Original matter of
C.P. (IB) No. 4/(MB)/2023

AMIT SAMPATLAL MARU

...Petitioners

Versus

**BRIJEEL FOODS & BEVERAGES
PRIVATE LIMITED**

...Respondents

Order Pronounced on : **18.06.2026**

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Sushil Mahadeorao Kochey

Hon'ble Member (Judicial)

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Appearances:

For the Liquidator : Adv Manoj Mishra
For the Kotak Mahindra Bank : Adv. Akshay Goel and Adv. Harsh
Tandon

ORDER

Brief Facts

1. This Tribunal, vide order dated 12.01.2026, initiated winding up proceedings against M/s. Brijeel Foods & Beverages Pvt. Ltd. (“the Company”), and appointed, vide order dated 02.02.2026, the Applicant herein as the Company Liquidator.
2. Pursuant to the winding up order, the Liquidator issued notice in Form WIN-43 inviting proof of debts on or before 04.03.2026. In response thereto, Kotak Mahindra Bank Limited (hereinafter referred to as the “Secured Financial Creditor”/ “Kotak Bank”) submitted its proof of debt in Form WIN-44 for an amount of Rs. 3,58,27,771.41/- before the Liquidator.
3. The Kotak Bank has filed Company Application No. 85 of 2026 on 28.3.2026 under Section 280 of the Companies Act, 2013 seeking directions restraining the Liquidator from interfering with its possession and realization of the secured assets under the provisions of the SARFAESI Act, 2002. Simultaneously, the Liquidator has filed Company Application No. 88 of 2026 on 4.4.2026 under Rule 11 of the National Company Law Tribunal Rules, 2016 seeking directions against Kotak Bank to hand over, deliver, and surrender the assets of the Company, in compliance with Sections 283 and 290 of the Companies Act, 2013 read with Rules 128, 129, and 130 of the Companies (Winding Up) Rules, as well as paragraphs 25 and 27 of the winding up order dated 12.01.2026.

Submissions of Kotak Mahindra Bank/Secured Financial Creditor:

4. The Kotak Bank has sought following relief in C.A. 85 of 2026

- a) To direct the Liquidator to refrain from interfering with the possession and realization of the secured assets of the Company by the Applicant under the provisions of the SARFAESI Act, 2002; and*
- b) To direct the Liquidator to extend all necessary cooperation to the Applicant and facilitate realization of the secured assets by the Applicant;*
5. It is the case of the Kotak Bank that certain credit facilities were extended to M/s. Brijeel Foods & Beverages Pvt. Ltd. In order to secure the said credit facilities, the Company created security interest in its favour, inter alia, by way of first and exclusive charge over all existing and future current assets and movable fixed assets as well as over some immovable properties of the Company.
6. It is stated that on 17.01.2024, the account of the Company was classified as a Non-Performing Asset (NPA). Thereafter, the Kotak Bank issued notice dated 08.02.2024 calling upon the Company to repay an amount of Rs. 2,23,05,382.61/- towards full and final settlement of the facilities availed. Subsequently, notice under Section 13(2) of the SARFAESI Act came to be issued on 15.04.2024. Thereafter, notice dated 24.07.2024 under Section 13(4) of the SARFAESI Act was issued for taking possession of the secured assets.
7. It is further stated that the Kotak Bank filed proceedings under Section 14 of the SARFAESI Act before the Learned 4th Joint Civil Judge, Senior Division & ACJM. Pursuant thereto, vide order dated 10.01.2025, a Court Commissioner, namely Advocate Janette Joseph Lucas, was appointed and physical possession of the secured assets was handed over to the Secured Financial Creditor. Thereafter, on various dates, e-auction notices came to be issued for sale of the immovable assets under the provisions of the SARFAESI Act read with Rules 8(6) and 9(1) of the Security Interest (Enforcement) Rules, 2002. In the meantime, this Tribunal, vide order dated 12.01.2026, directed winding up of the affairs of the Company under Section 271(e) of the Companies Act, 2013.
8. It is further stated that on 03.03.2026, the Kotak Bank submitted its proof of debt in Form WIN-44 before the Liquidator for an amount of Rs. 3,58,27,771.41/-. Thereafter, on 10.03.2026, the Liquidator convened the first

meeting of the creditors of the Company; however, no voting took place in the said meeting.

9. It is contended that, being secured financial creditor, the bank has a right to enforce its security interest outside the winding up proceedings and the liquidator has no right to interfere. It is also contended that allowing a creditor to realise its security under SARFAESI instead of surrendering the same in the winding up proceedings shall not prejudice any party, on the other hand forcing the creditor to surrender its security would cause an irreparable harm to the Secured Creditor.
10. It is case of the Kotak Bank that the Liquidator has called upon it to surrender the secured assets in disregard of the provisions of the Companies Act, 2013 and the rules framed thereunder. It is further stated that the Liquidator issued Form WIN-51 directing the Secured Financial Creditor to surrender the secured assets. Aggrieved thereby, the Secured Financial Creditor has preferred the present C.A. No. 85 of 2026 seeking directions restraining the Liquidator from interfering with the possession and realization of the secured assets
11. Apart from that the Kotak Bank also opposed the Company Application No. 88 of 2026 filed by the liquidator on the ground that the same has been erroneously preferred under Rule 11 of the National Company Law Tribunal Rules, 2016. It is further submitted that an application to this Tribunal, for "appropriate orders" to take control of any property of the Company, can only be filed under Rule 130 of the Company (Winding Up) Rules, 2020. Therefore, it is prayed that the application is liable to be rejected as where a specific provision exists for making an application, an application under the general rule is impermissible.

Submissions of the Liquidator

12. It is the case of the Company Liquidator that Kotak Mahindra Bank proved its entire claim amounting to Rs. 3,58,27,771.41/- and thereafter participated in the First Meeting of Creditors, wherein it allegedly voted in respect of its whole debt and approved Agenda Item No. 4 concerning the proposed monthly remuneration of the Company Liquidator and other winding-up costs. The

Liquidator further submits that the Bank also agreed to continue as a member of the Advisory Committee under Agenda Item No. 5. According to the Liquidator, such conduct evidences the Bank's participation in the winding-up proceedings and attracts the consequences contemplated under the Winding Up Rules. Notwithstanding the same, the Bank has refused to hand over the secured assets to the Company Liquidator, thereby necessitating the filing of C.A. (CA) No. 88 of 2026. In the meantime, the Bank has filed C.A. (CA) No. 85 of 2026 seeking exclusion of the said assets from the liquidation estate.

13. The Liquidator has further submitted that it is a settled position that the stage for relinquishing security arises at the stage when the debt has to be proved i.e., at the time of submission of Form WIN 44. When a secured creditor seeks to prove the whole of its debt in the course of the winding up proceedings, then such creditor must necessarily relinquish his security. Hence, in the instant case, it becomes necessary that the Bank hand over its security to the Liquidator. However, in spite of proving its entire debt (which also stands admitted in full by the Liquidator), the Applicant has abjectly failed to hand over the said properties to the Liquidator.
14. It is also submitted by the Liquidator that in the present case, the Kotak Bank has neither deducted any amount allegedly realized from the security nor reduced the value of the security from its claim, and, a bare perusal of the Proof of Debt in Form WIN-44 filed along with the present application demonstrates that the Applicant has sought to prove the whole debt amounting to Rs. 3,58,27,771.41/- (Rupees Three Crores Fifty-Eight Lakhs Twenty-Seven Thousand Seven Hundred Seventy-One and Paise Forty-One Only) and not merely the balance debt remaining after adjustment of any realization or valuation of the security. It is further submitted that, despite this position, the Applicant has sought to convey before this Tribunal that only the balance dues were being proved, whereas the contents of Form WIN-44 clearly show that the entire debt has been claimed without any deduction on account of realization or valuation of the secured assets.

15. It is further submitted by the Liquidator that the Kotak Bank has sought to avail a double benefit in the present case i.e. despite having proved its debt in its entirety, the Applicant has chosen not to relinquish its security in the course of the winding-up proceedings. It was contended that once a secured creditor elects to prove the whole of its debt in the winding up, it cannot simultaneously retain and enforce its security. The Applicant's conduct of seeking to prove the entire debt while continuing to stand outside the winding up and preserve its security interest was stated to be contrary to the settled legal position as laid down by the Hon'ble Supreme Court and various High Courts. It was therefore argued that such a course of action is impermissible in law and amounts to securing an undue advantage at the expense of other stakeholders in the liquidation process.

Findings:

16. We have heard the learned Counsel appearing for the parties and have perused the material available on record.
17. The issue for consideration in the present application is whether the security interest held by Kotak Bank is deemed to be relinquished on exercise of vote by it in the meeting of creditors?
18. Rules 101(1) of Winding-Up Rules provides that “(1) *In a winding up by the Tribunal, every creditor shall, subject as hereinafter provided, prove his debt, unless the Tribunal in any particular case directs that any creditors or class of creditors shall be admitted without proof*”. Rule 103 further provides that “*An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated and the affidavit shall state whether the creditor is a secured creditor, or a preferential creditor, and if so, shall set out the particulars of the security or of the preferential claims, and the affidavit shall be in **Form WIN 44***”. Rule 119 requires the Company Liquidator to file “*in the Tribunal a list of the creditors, in Form WIN 50, who submitted to him proofs of their claims in pursuance of the advertisement and the notice referred to in*

rule 100, mentioning the amounts of debt for which they claimed to be creditors, distinguishing in such list the proofs admitted wholly, the proofs admitted or rejected in part, and the proofs wholly rejected, and the proofs, with the memorandum of admission or rejection of the same in whole or in part, as the case may be, endorsed thereon, shall be filed in Tribunal along with the certificate”.

19. In this case, the Liquidator made public announcement in terms of Rule 100 of The Companies (Winding Up) Rules, 2020 (*‘Winding-Up Rules’*) on 18.2.2026 requiring all creditors to submit to the Company Liquidator proofs of their respective Debts or claims against the Company by delivering at the office of the Company liquidator on or before the 04.03.2026. In response, the Kotak Bank submitted its proof of claim for a sum of Rs. 3,58,27,771.41 in prescribed form WIN-44 on 03.03.2026 further stating therein the details of security held by it along with value of such security estimated at Rs. 3,17,00,000/- based on reserve price notified in last auction of security interest conducted by it. The said claim of Kotak Bank, which exceeds the estimated value of security, was admitted by the Liquidator.
20. Prior to filing of proof of claim, in response to the email dated 17.2.2026 sent by the Liquidator requiring the Kotak Bank to handover the possession of assets in its possession, the Kotak Bank, vide email of even date, responded that *“You are requested to share the provisions under which the possession of the assets are being asked, specifically in light of the fact that the assets are mortgaged / hypothecated in favour of Kotak Mahindra Bank Ltd and the legal proceedings in respect of the same have already been in force.”* Further, vide email dated 13.3.2026, the Liquidator informed the Kotak Bank that *“it is the duty of Kotak Mahindra Bank Limited to hand over Assets of the said Company to the Company Liquidator immediately. It would be highly appreciated if Kotak’s team hands over the assets of the company to Liquidator immediately”*, and the said request was followed vide email dated 23.3.2026 & 24.3.2026.
21. It is pertinent to note that neither the Companies Act, 2013 nor the Companies (Winding Up) Rules, 2020 prescribe any specific form, procedure, or mode by

which a secured creditor is required to relinquish or surrender its security interest in favour of the liquidation estate. The question whether a secured creditor has relinquished its security is therefore to be determined from its express declaration, election, and the attendant facts and conduct demonstrating an unequivocal intention to abandon its right to realize the security independently and participate in the winding-up proceedings.

22. The form WIN-44 does not contain any declaration or stipulation indicating whether the secured creditor has elected to relinquish its security interest and participate in the winding-up proceedings, or whether it intends to stand outside the winding up and realise its security independently. Further, the Official Liquidator has not placed on record any communication, declaration, or other material evidencing an express election on the part of the secured creditor to relinquish its security interest.
23. Though, the Winding-up Rules does not require the security interest holder to convey its intention to realise the security interest, the Kotak Bank, vide email dated 25.3.2026, expressly informed the Liquidator that *“Apropos to our discussion last week, we have had an internal deliberation and given the below facts, KMBL has decided to file an application before NCLT, seeking exclusion of the assets charged / mortgaged specifically to KMBL from this liquidation proceedings.”*
24. In the meanwhile, the Liquidator convened first meeting of creditors on 10.3.2026, which was attended by Kotak Bank, and it voted on the resolutions put for vote in the said meeting. The agenda items discussed in the said meeting were :
 - a. To update progress of the Company Liquidation,
 - b. To take note of the monthly fee to be paid to the Company Liquidator for the winding up of Mis. Brijeel Foods & Beverages Private Limited, as well as other costs related to the appointment of professionals and the ongoing winding~up process,
 - c. To determine the members of the advisory committee and to express the views of the creditors,

- d. To discuss such other matters as may be deemed necessary for the smooth functioning of the Liquidation process
25. It is an admitted position that the Bank participated in the First Meeting of Creditors of the Company held on 10.03.2026. The case of the Company Liquidator is that, during the said meeting, the secured creditor cast its vote in respect of its entire debt and voted in favour of Agenda Item No. 4 pertaining to the proposed monthly remuneration of the Company Liquidator and other costs of winding up and also as per Item No. 5 agreed to continue as a member in the Advisory Committee. According to the Liquidator, such participation attracts the deeming provision contained in Rule 61 of the Companies (Winding Up) Rules, 2020. Accordingly, it is case of the Liquidator that the Kotak Bank, having exercised its vote on the resolutions put forth at the first meeting, is deemed to have relinquished its security interest.
26. Rule 60 of the Winding-up Rules provides '*When secured creditor can vote*', and states that "*For the purposes of voting at a meeting, in a winding up by the Tribunal, a secured creditor shall, unless he surrenders his security, state in his aforesaid proof, the particulars of his security, the date when it was given and the value at which it is assessed by a registered valuer, and shall be entitled to vote only in respect of the balance due to him, if any, after deducting the value of his security*"
27. It is clear from the plain reading of Rule 60 that the Kotak Bank was entitled to vote on the resolution in respect of amount of debt due from the Company after deducting the security interest. It is pertinent to note that prescribed Form Win-44 does not contain any column requiring such deduction, and such right is to be inferred from the plain reading of Rule 60 itself. In the present case, the Kotak Bank had stated the particulars of his security, the date when it was given and the value at which it is assessed by a registered valuer in the prescribed form of Proof, which a security interest holder is not required if it proceeds to surrender the security interest, hence, it was for the liquidator to determine the voting rights of each creditors, and it is he who was to deduct the value of security interest held by Kotak Bank while determining the voting share of each

creditor voting on the resolution put forth. Since the value of total debt exceeds the estimated value of security, thus, the Kotak Bank was entitled to exercise its voting rights as creditor to the extent of balance amount remaining uncovered by the security interest. The Liquidator has not placed on record any communication whereby the creditors were apprised in relation to their vote shares, indicating thereby that Kotak Bank was aware in respect of value of debt it is exercising its vote in the first creditor's meeting. Since, the Kotak Bank had a right to vote in the meeting of creditors in respect of residual balance, the exercise of their vote in the creditor's meeting can not lead to deemed relinquishment of security interest. It is relevant to reproduce Rule 61, which reads as under :

61. Effect of voting by a secured creditor.— If a secured creditor votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Tribunal, on an application by such creditor, is satisfied that the omission to value the security was due to inadvertence.

28. Further, Rule 61 allows the Secured Creditor to approach this Tribunal if such creditor votes in respect of his whole debt, assuming that the Kotak Bank was made aware of value of debt in respect of it is to exercise its vote in the meeting. Kotak Bank has filed CA 85 of 2026 in this relation on 28.03.2026 prior to issuance of WIN-51 by the Liquidator requiring it to hand over assets of Brijeele Foods & Beverages Private Limited which are under control of Kotak Bank.
29. Nonetheless, it is pertinent to note that the proviso to Rule 58 of the Companies (Winding-up) Rules expressly provides that Rule 58 which stipulates *When creditor can vote* and Rules 59 to 62 (including Rule 61 which stipulates *Effect of voting by a secured creditor*) shall not apply to a meeting of creditors held prior to the meeting contemplated under Section 287 of the Companies Act, 2013. Section 287(3) of the Companies Act, 2013 provides that “*The Company Liquidator shall convene a meeting of creditors and contributories, as ascertained from the books and documents, of the company within thirty days from the date of order of winding up for enabling the Tribunal to determine the persons who may be members of the advisory committee*”. In the present case,

the meeting held on 10.03.2026 has been described as the first meeting of creditors and, therefore, necessarily falls within the ambit of Section 287(3). Consequently, Rules 60 and 61 are inapplicable to the exercise of voting rights in such meeting. It follows that the deeming provision contained in Rule 61, whereby a secured creditor may be treated as having relinquished its security by exercising voting rights in excess of the value of its security, would also have no application. Accordingly, the voting rights exercised by the secured creditor at the meeting dated 10.03.2026 cannot be construed as amounting to a relinquishment of its security interest, as contended by the Liquidator. Furthermore, as already discussed, there is no express election or declaration on the part of the secured creditor indicating that it has relinquished, or intends to relinquish, its security interest.

30. Admittedly the bank has submitted its proof of debt in Form WIN-44 for an amount of Rs. 3,58,27,771.41/- before the Liquidator in pursuant to the notice issued by liquidator in Form WIN-43 inviting proof of debts. Hence, the liquidator requiring Kotak Bank to handover security interest to him has committed error in law, and he ought to have analysed the provisions of Companies Act, 2013 in relation to winding up before requiring the Kotak Bank for such handing over, as the Companies Act, 2013 does not require the security interest holder to notify its intent to realise security interest within specified time or realise such interest thereafter within definite timelines.

31. Further, Hon'ble Supreme Court as far back as in 2016 in *Pegasus Assets Reconstructions Private Limited versus Haryana Concast Limited & Anr;* (2016) 4 SCC 47 held that “23. A reading of Sections 9 and 13 of the SARFAESI Act leaves no manner of doubt that for enforcement of its security interest, a secured creditor has been not only vested with powers to do so without the intervention of the court or tribunal but detailed procedure has also been prescribed to take care of various eventualities such as when the borrower company is under liquidation for which proviso to sub-section (9) of Section 13 contains clear mandate keeping in view the provisions of Sections 529 and 529-A of the Companies Act, 1956.

32. Similarly, Hon'ble Supreme Court in the matter of *A. Navinchandra Steels Private Limited vs SREI Equipment Finance Limited & Ors*; 2021 4 SCC 435, held that “ 27. It is settled law that a secured creditor stands outside the winding up and can realize its security dehors winding-up proceedings”.
33. Thus, the legal position is well settled that a secured creditor is entitled to stand outside the winding-up proceedings and enforce its security interest in accordance with the provisions of the SARFAESI Act without interference from the Company Court or the Company Liquidator.
34. Having regard to the statutory framework, the safeguards embodied in Rules 61 and 62, the absence of any express election to surrender the security, the lack of material demonstrating a formal vote in respect of the entire debt, and the subsequent unequivocal assertion by the secured creditor of its intention to realise the security outside the winding-up proceedings, this Tribunal is unable to conclude that the secured creditor has relinquished or surrendered its security interest.
35. The scheme of the Companies Act, 2013 and the Companies (Winding Up) Rules, 2020 preserves the secured creditor's right to elect whether to stand outside the winding-up proceedings and realise its security independently, or to participate in the winding-up process in accordance with law. Such a valuable right cannot be held to have been abandoned except upon a clear, unequivocal, and legally sustainable basis. In the facts of the present case, no such basis has been established. Accordingly, the secured creditor cannot be treated as having relinquished its security interest and remains entitled to exercise its rights as a secured creditor in accordance with law.
36. In view of the foregoing discussion and the findings recorded hereinabove, this Bench is of the considered opinion that the Applicant–secured creditor has not relinquished or surrendered its security interest in favour of the liquidation estate and is entitled to exercise its rights as a secured creditor in accordance with law.

ORDER

37. Consequently, COMPANY APPLICATION No. 85 of 2026 in CP No. 4 (MB) of 2023 is hereby allowed. As a necessary corollary, COMPANY APPLICATION No. 88 of 2026 in CP No. 4 (MB) of 2023, being devoid of merit in light of the findings recorded hereinabove, stands dismissed.

38. No order as to costs.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Vijay Andhale

Sd/-

SUSHIL MAHADEORAO KOCHEY
MEMBER (JUDICIAL)