NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. IA/5150/2024 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 and Bankruptcy Code, 2016

Order Delivered on 08.09.2026

CORAM:
SH. VINAY GOEL
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:
For the Applicant/RP: Adv. Ayush Rajani a/w Adv. Khushboo Rajani, Adv. Siddharth Etambe i/b AKR Legal, Advocates (VC)

For the Respondent in IA/5150/2024: Adv Tanish Amin i/b Vidhii Partners (VC)

ORDER

IA/5150/2024- The above IA/5150/2024 is listed for pronouncement of order. The same is pronounced in open Court, vide a separate order.

Sd/-
VINAY GOEL
Member (Judicial)

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

//*Avdhesh*//

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-V

IA/5150/2024

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. Santosh Nangare
Assistant Vice President, /VicePresident, Structured Assets Group,Axis Bank Limited
Axis House, Wadia International Centre, P.B. Marg, Worli,
Mumbai - 400 025

…Respondent

IN THE ORIGINAL MATTER OF:
Kalindi Green Ventures

…Operational Creditor

Versus

DK Infrastructure Private Limited

…Corporate Debtor

Order Delivered on: 08.09.2026

Coram:

Sh. Vinay Goel
Member (Judicial)

Sh. Charanjeet Singh Gulati
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/5150/2024: 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.72,68,282/ 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.

Brief facts of the case

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 06.05.2023 was admitted.

3. The Respondent was holding Fixed Deposit Receipts ("FDRs") of the Corporate Debtor as margin money against Bank Guarantees. Despite repeated requests dated 18.08.2023 and 05.09.2023 seeking release of an amount of Rs.1,20,26,364/-, the Applicant was informed that the said FDRs continued to remain under lien. The Applicant further stated that, as on 26.08.2024, three Bank Guarantees, bearing Nos. 01830100000204, 01830100000303 and 01830100000335, aggregating to Rs.1,29,09,293/-, remained outstanding, against which the margin required at 15% was Rs.19,36,394/-. However, the Respondent had marked lien over FDRs aggregating to Rs.92,04,676/-, thereby resulting in an excess margin of Rs.72,68,282/-.

4. The Applicant further contended that margin money remains with the Bank only so long as the Bank Guarantee is alive and, upon expiry without invocation, reverts to the Corporate Debtor. Accordingly, the Applicant requested release of Rs.72,68,282/- to the CIRP account, but despite reminders dated 28.08.2024 and

31.08.2024, the Respondent neither released the amount nor responded. The Applicant therefore sought a direction for release and remittance of the said excess margin money to the CIRP account.

5. The Respondent filed its reply and stated that the Application was based on a baseless apprehension that the Bank had appropriated the amount under the Bank Guarantee during the moratorium in violation of the IBC. It was contended that, under 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.

6. It was further contended that the Corporate Debtor had availed credit facilities of Rs.20 crore, comprising fund-based facilities of Rs.10 crore and Bank Guarantee facilities of Rs.10 crore, under sanction terms requiring 15% cash margin in the form of FDR and 100% cash margin for disputed liabilities. It was further contended that a Bank Guarantee of Rs.87.88 lakh issued in favour of Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation Limited was invoked, pursuant to which the Bank remitted the guaranteed amount to the beneficiary.

7. The said invocation was discussed in the 19th CoC meeting held on 21.08.2024, following which the Applicant alleged fraudulent invocation and sought refund of the amount. It was further contended that the Bank was holding an FDR of Rs.92,04,676/- as cash margin against the Bank Guarantees.

8. The Respondent contended that the invocation of the Performance Bank Guarantee during the moratorium did not violate Section 14 of the Code and that the margin money was neither a "Security Interest" nor an asset of the Corporate

Debtor protected under the moratorium. Accordingly, it was contended that neither the invocation of the Bank Guarantee nor the retention of the margin money was prohibited under Section 14 of the Code, and the application was liable to be dismissed with costs.

Analysis and findings

9. The present Application has been filed by the Resolution Professional seeking a direction to the Respondent-Bank to remit a sum of Rs.72,68,282/- to the CIRP account of the Corporate Debtor, being the excess margin money retained against the subsisting Bank Guarantees.

10. It is the case of the Applicant that the Respondent-Bank was holding FDRs amounting to Rs.92,04,676/- as margin money against the Bank Guarantees issued on behalf of the Corporate Debtor. According to the Applicant, as on 26.08.2024, three Bank Guarantees aggregating to Rs.1,29,09,293/- were outstanding, against which only 15% margin amounting to Rs.19,36,394/- was required to be maintained. Thus, the Respondent was holding an excess margin of Rs.72,68,282/-. The Applicant contends that the said excess margin money is not required to be retained by the Respondent and is liable to be released and remitted to the CIRP account of the Corporate Debtor. Despite repeated requests and reminders, the Respondent failed to release the said amount, thereby necessitating the filing of the present Application.

11. Per Contra, it is the case of the respondent that the margin money did not constitute an asset or security interest of the Corporate Debtor protected under Section 14 of the Code and, therefore, the Bank was entitled to retain the same, including the alleged excess margin money. In support of its contention, the Respondent placed reliance on the decision of the Hon'ble NCLAT in ***Punjab***

***National Bank v. Supriyo Kumar Choudhary, Resolution Professional*, 2022 SCC OnLine NCLAT 3924.**

12. At this juncture, it is pertinent to refer to 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***, which was relied upon by the Applicant and the relevant portion thereof is reproduced hereinbelow:

> *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.*

13. Thus, the Hon'ble NCLAT has held that the margin money remains with the Bank so long as the corresponding Bank Guarantee is alive and, upon expiry of the Bank Guarantee without invocation, the margin money reverts to the borrower. Therefore, the Bank's right to retain the margin money is linked to the subsistence of the corresponding Bank Guarantee and the liability arising therefrom.

14. In view of the above, the contention of the Respondent that the Bank is entitled to retain the margin money against the subsisting Bank Guarantees is acceptable to the extent of the margin required for such Bank Guarantees. However, such entitlement does not confer any right on the Bank to retain any amount in excess of the required margin. Any excess amount retained without any contractual or lawful basis is liable to be released to the Corporate Debtor.

15. In the present case, three Bank Guarantees aggregating to Rs.1,29,09,293/- were subsisting and, as per the sanction terms, the stipulated margin was 15%, amounting to Rs.19,36,394/-. Accordingly, the Respondent-Bank was entitled to retain Rs.19,36,394/- as margin against the subsisting Bank Guarantees. However, the FDRs held by the Respondent amounted to Rs.92,04,676/-, resulting in excess retention of Rs.72,68,282/- over and above the stipulated margin. The Respondent has not established any contractual or other lawful basis for retaining the said excess amount. Accordingly, while the Respondent is entitled to retain Rs.19,36,394/- towards the margin for the subsisting Bank Guarantees, the excess amount of Rs.72,68,282/- is liable to be released and remitted to the CIRP account of the Corporate Debtor.

16. As regards the invocation of the Bank Guarantee of Rs.87.88 lakh and the allegation of fraudulent invocation, this Adjudicating Authority notes that the said issue is the subject matter of a separate application. Accordingly, the said issue is not being considered or adjudicated upon in the present application.

17. For completeness, this Tribunal also considers the reliance placed by the Respondent on the decision of the ***Hon'ble NCLAT in Punjab National Bank v. Supriyo Kumar Chaudhuri, Resolution Professional, 2022 SCC OnLine NCLAT 3924***. In the said case the Letters of Credit had already been invoked and honoured, and the margin money represented the specific amount earmarked for and co-extensive with the liability that had crystallised upon such invocation. The entire amount had accordingly been appropriated towards discharge of the crystallised LC liability. It was in that context that the Hon'ble NCLAT held that the margin money was held in trust for the beneficiary and, upon invocation and

honouring of the underlying instrument, ceased to constitute an asset of the Corporate Debtor.

18. The position in the present case is materially different. None of the three Bank Guarantees, aggregating to Rs.1,29,09,293/-, has been invoked; all three continue to subsist. The question before this Adjudicating Authority concerns not the retention of margin money against an invoked guarantee, but the excess amount retained by the Respondent beyond the 15% margin stipulated under the sanction terms. No liability has crystallised under any of the said Bank Guarantees, nor has the Respondent established that the excess sum of Rs.72,68,282/- was specifically earmarked or otherwise required to secure any obligation towards the beneficiaries. Accordingly, judgement in the case *Supriyo Kumar Chaudhuri (supra)* is distinguishable on facts. The said decision concerned margin money against an invoked and honoured Letter of Credit and does not justify retention of any amount beyond the 15% contractual margin. The Respondent has, therefore, failed to establish any basis for retaining the excess amount of Rs.72,68,282/-.

19. In view of the facts and circumstances of the case, the Bank is directed to remit the amount of Rs. 72,68,282/-to the account of the Corporate Debtor maintained by the Resolution Professional within **30** days, of receipt of this order.

20. In the light of the foregoing discussion, the present application, **IA/5150/2024,** is **allowed** and **disposed** of.

21. 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.

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

File be consigned to records.

Sd/-

VINAY GOEL
Member (Judicial)

Sd/-

CHARANJEET SINGH GULATI
Member (Technical)