THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

IA (I.B.C)/3582(MB)2026

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

Mamta Ravi Doshi & Ors.

...**Applicants**

V/s

Mr. Avil Menezes Liquidator of Auro Gold Private Limited

…**Respondent**

In the matter of

COMPANY PETITION (IB) NO. 1802 OF 2019

STATE BANK OF INDIA

…**Petitioner / Financial Creditor**

V/s

AURO GOLD JEWELLERY PRIVATE LTD.

…**Respondent / Corporate Debtor**

Order delivered on: 28.10.2026

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Adv. Shriya Mehta i/b Adv. Kunal Bhanage
For the Respondent	:	Adv. Aniruth Purusothaman

ORDER

1. The present Interlocutory Application is filed by Mamta Ravi Doshi and Ravi Ghewarchand Doshi, Applicants, praying for the following reliefs:

   a) *"That the Hon'ble Tribunal be pleased to quash and set aside forfeiture of EMD vide letter dated 13th May 2024.*

   b) *That the liquidator may kindly be ordered and directed to refund the EMD amount of Rs.42,80,680/- with interest within seven days or within such period as the Hon'ble Tribunal deem, fit and proper.*

   c) *Ad -interim relief in terms of prayers (a) and (b) above.*

   d) *Such further or other orders be passed in the matter as this Hon'ble Tribunal may deem fit and proper."*

2. The Applicants had jointly participated in the e-auction conducted by Mr Avil Menezes, the liquidator of Auro Gold Jewellery Private Limited, and deposited a sum of Rs. 42,80,68-/- as Earnest Money along with a bid form for participation in the e-auction scheduled on 24.4.2024. The Applicants were unsuccessful bidders in the e-auction; accordingly, the Applicants claimed a refund of the Earnest Money, as it had become refundable under clause 11(vi) of the Process Memorandum. However, the Liquidator didn't refund the said Earnest Money and forfeited the same vide letter dated 13.5.2024 for adjustment thereof against the claim for rent for occupation of the property in auction as its tenant against the Applicant(s), on account

of the Applicant's failure to provide details of rent paid for such occupation to the corporate debtor.

3. Being aggrieved, this application has been filed for directions to the respondent Liquidator to refund the said Earnest money and quashing of the communication dated 13.5.2024 forfeiting the said Earnest money.

4. We heard the parties and have perused the application, reply of the Liquidator and rejoinder thereto filed by the applicant.

5. Clause 11(vi) of the Process Memorandum provides that "*No interest will be paid to the Bidders/Eligible Bidders in relation to any such amounts mentioned above. The EMD of the Successful Bidder shall be retained towards part sale consideration and the EMD of unsuccessful bidders shall be refunded. The Liquidator will issue a letter to the Successful Bidder and the Successful Bidder shall have to deposit the balance consideration (after adjustment of the EMD) of the sale price within 90 days of such demand. (Payments made after 30 days shall attract interest at the rate of 12% per annum). On payment of the full amount, the sale shall stand completed and the Liquidator shall execute certificate of sale or sale deed to transfer such assets and the Assets shall be delivered to the Successful Bidder in the manner specified in the terms of sale*." This clause makes the Earnest Money Deposit (EMD) paid by a bidder refundable, if such bidder is declared unsuccessful and does not provide any condition whereby such refund can be withheld.

6. **The impugned letter dated 13.5.2024 reads as follows:**

Dear Sir,

Please find the attached herewith the order passed by the Hon'ble NCLT, Mumbai Bench dated 23 November 2023 in IA 2878/2023 wherein the counsel appearing for the respondent had informed that the rent has already paid to the erstwhile management and they are ready to give the

details thereof. However, as on date no information/ details is received. Further, the Bench has directed that the Liquidator may consider to take appropriate action in case the Respondent i.e., Tenants does not submit the details of the rent paid by them.

In view of the above directions passed by the Hon'ble NCLT, the Liquidator has forfeited the EMD amount of INR 42,80,680/- deposited by you.

In case of any clarification please feel free to contact us.

7. Clause 11(vii) provides circumstances under which the Earnest Money becomes liable to be forfeited, and it reads as under :

vii. Forfeiture of Earnest Money from the Auction Process Applicant

The Earnest Money furnished can be forfeited at any time, upon the occurrence of any of the following events:

a) if any of the conditions under this Process Memorandum are breached by the Successful Bidder or in case the Successful Bidder is found to have made any false representation; or

b) if the Successful Bidder is found to be ineligible to submit the bid under Section 29A of the IBC (as amended from time to time) or is found to have made a false or misleading declaration of eligibility under Section 29A of the IBC (as amended from time to time); or

c) if the Eligible Bidder/ Successful Bidder is found to be, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the auction process or has, undertaken any action in respect of such process which results in the breach of any applicable law including the Prevention of Corruption Act, 1988;

d) Default in deposit of amount by the Successful Bidder within the timeframe set out in Clause 16 of this Process Memorandum, OR

If the Successful Bidder fails to take custody of assets within the validity of gate pass; if any.

8. None of the sub-clauses in clause 11(vii) contemplates forfeiture of Earnest Money paid by a bidder for the recovery of any amount due from such bidder or for any breach, other than those specifically enumerated therein. Accordingly, the Earnest Money could not have been forfeited in the manner the Liquidator did. Since the Liquidator is claimed to have forfeited such Earnest Money due to the Applicants pursuant to the order dated 23.11.2023 passed by this Tribunal in IA 2878 of 2023, it is relevant to refer to that order, as well as the order dated 17.3.2026 passed in IA 2493 of 2024 relied upon in the reply. The relevant parts of both these orders are reproduced hereunder :

Order dated 23.11.2023 passed in IA 2878 of 2023

1. Ld. Counsel for the Respondent seeks two weeks' time contending that they have found alternate premises for shifting therein so that the present premises occupied by them can be vacated.

2. Counsel for the Respondent informs that the rent has already paid to the erstwhile management and they are ready to give the details thereof. The Applicant may consider appropriate action thereafter.

3. In view of above, the I.A. 2878/2023 is disposed of.

Order dated 17.03.2026 in I.A. 2493/MB/2024

Rent collectible amounting to Rs.81,68,754/- from Residential flat Nos. 3403 & 3404, 34th Floor, A Wing, Shreepati Jewels. Girgaon, Mumbai — 400004 was not found received in the Bank Account of Corporate Debtor:

"Indubitably, the amounts paid by the occupants of these flats are liable to be contributed towards the assets of the corporate debtor, and it cannot be denied that these occupants were also part of such fraudulent act. Since, they are not party respondents, no order is being passed against them. It is

undisputed fact that the Respondent No. 1 is son of Late Amritlal Jain and is legal heir to him. It is also noted that Ajit Lal Jain died on 10.12.2019, accordingly, it is not clear as to whom the rent was paid by occupants, however, it is pertinent to note that the occupants of these flats have stated that the rent was paid to erstwhile management, hence, the most probable conclusion than not from the facts of the case is that the Respondent No. 1, being son and legal heir of Late Amritlal Jain as well as in possession of keys of the house, was in effective control of affairs of the corporate debtor even though not being its director at the relevant time. Further, the Respondent No. 2 continued as director of corporate debtor after demise of Amritlal Patel and constitute part of erstwhile management. Accordingly, we consider it appropriate to direct Respondent No. 1 and 2 to contribute the amounts of aforesaid contribution to corporate debtor jointly and severally within 30 days, failing which the amount remaining unpaid shall carry interest @ 12%. p.a. and interest shall be appropriated first from any subsequent payment after expiry of stated period."

9. In any case, the order dated 23.11.2023, which left it for the Liquidator to consider appropriate action against the Applicants herein in view of their agreeing to provide payment details to the Liquidator and their subsequent failure to do so, cannot be read to vest any right in the Liquidator to appropriate unliquidated recoveries from a person against sums due under an independent transaction.

10. The Liquidator has invoked Regulation 29 of the IBBI (Liquidation Process) Regulations, 2016, which provides for Mutual credits and set-off, and reads that "*Where there are mutual dealings between the corporate debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party*." To invoke Regulation 29, it

is imperative that there be quantified debt due from the other party. In the present case, there is nothing on record to demonstrate that the explanation of the applicants that they have paid the rent to the erstwhile directors was found false. The Liquidator forfeited the Earnest Money in toto without there being any adjudication as to quantum thereof or without any inquiry from the erstwhile directors, if they had received the rent so claimed to have been paid. The reliance of the liquidator on the order dated 17.3.2026 is misplaced as the inference of the Applicants being a colluding party reached by this Tribunal was only in the context of determination of the quantum of the value of rent and not beyond that.

11. Further, the order dated 17.3.2026 cannot justify the forfeiture committed on 13.5.2024. Further, our conclusion in the order dated 17.3.2026 is founded on the premise that the money ought to have come to the coffers of the corporate debtor, and since it didn't, the Applicant can also be said to be part of the fraudulent conduct of the suspended directors, but it cannot be read to mean that this order had fastened any liability on the Applicants to pay such rents. In our considered view, the Liquidator, being aware of the Applicants' non-provision of rent details, ought to have taken steps to implead them in IA 2493 of 2024. Since there is no finding that the Applicants had not paid the rent to the erstwhile directors, it cannot be said that any debt was due from the Applicants to justify recovering it from the Earnest Money, which had become refundable under the Process Memorandum.

12. Further, reliance upon the decision in the case of ***Ujaas Energy Ltd. v. West Bengal Power Development Corporation Ltd. [Civil Appeal No. 3619 of 2026]*** is misplaced as the issue involved in the said case was distinctly different. The Hon'ble Supreme Court had upheld the right of a creditor, whose claims stand extinguished in terms of an approved resolution plan,

to raise a defence in the form of a counterclaim in pending arbitral proceedings and limited such defence to the extent the amount is determined payable to the corporate debtor by such creditor in the final award. In the present case, the applicant is raising a right of set-off for a debt that is yet to crystallise and for which no proceedings are pending for its crystallisation, against a debt that has become due and payable in terms of a binding arrangement codified under the Process Memorandum.

13. In view of the aforesaid, we consider it appropriate to direct the Liquidator to refund the aforesaid amount representing Earnest Money within 15 days to the Applicants. Needless to say, the Liquidator shall be at liberty to take appropriate remedial action against the Applicants as permitted by law.

14. In terms of above, the IA (I.B.C)/3582(MB)2026 is **allowed and disposed of**.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)