

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 5481 OF 2023**

Under Section 60(5) of Insolvency &  
Bankruptcy Code, 2016 R/W Rule 11 of  
NCLT Rules, 2016

**Avil Jerome Menezes**  
Liquidator of Sunil Hi-tech Engineers  
Limited  
**...Applicant**

Vs.

**ICICI Bank Limited**  
**...Respondent**

In the matter of

C.P.(IB) No. 2295/MB/2018

American Express Banking Corporation  
**Financial Creditor**

Vs.

Sunil Hi-tech Engineers Limited  
**Corporate Debtor**

*Order delivered on: 07.05.2024*

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice V.G. Bisht (Retd.)**  
Hon'ble Member (Judicial)

*Appearances:*

For the Applicant : Mr. Gaurav Jain, Advocate  
For the Respondents : Mr. Nausher Kohli, Advocate

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This Application IA 5481/2023 is filed by Avil Jerome Menezes, Liquidator (“Applicant”) against ICICI Bank Limited, in the matter of Sunil Hi-tech Engineers Limited (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 (“Code”), seeking direction against the Respondent to immediately release the wrongful appropriation of the Fixed Deposits amounting to Rs. 4,27,50,840/- which was illegally adjusted by the Respondent to the following account of the Corporate Debtor:

Name of the Account Holder : Sunil Hitech Engineer Limited

Account Number : 039305012701

Branch Address : Backbay Reclamation, Mindo

IFSC Code : ICIC0000393

2. The Application is being filed by the liquidator of Sunil Hi-Tech Engineers Limited (“SHEL/Corporate Debtor) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“Code”) read Rule 11 of National Company Law Tribunal Rules, 2016 (“Rules”) seeking

direction against the Respondent to release the fixed deposit bearing no. 624214053866 amounting to INR 4,60,78,489 ("Fixed Deposit") which has been illegally, wrongly and arbitrarily appropriated by Respondent, without due consent and knowledge of the Applicant despite the fact that same is an asset of the Corporate Debtor as the Respondent has decided to relinquish its security interest into the liquidation estate as per Section 52 of the Code

2.1. The Applicant viz. Avil Menezes is the liquidator nor of the Corporate Debtor which is presently undergoing liquidation process pursuant to the order of this Hon'ble Tribunal dated 25 June 2019.

2.2. The Hon'ble National Company Law Appellate Tribunal Hon'ble NCLAT) vide an order dated 18 August 2022 stayed the formation of the Committee of Creditors (CoC) of the Corporate Debtor. Thereafter, the Hon'ble NCLAT vide order dated 20 December 2022 vacated the stay on the formation of the CoC of the Corporate Debtor and upheld the CIRP initiated against the Corporate Debtor

2.3. The Respondent informed the Applicant that the Respondent has decided to relinquish its security interest into the liquidation estate as more particularly specified therein in accordance with the provisions of section 57 of the Code.

2.4. The Applicant submits that MSEDCL vide letter dated 29th April 2022 informed the Respondent that since Bank Guarantee bearing reference no. 0059BG00030612 for INR 4,68,29,500 ("Bank Guarantee") was expiring on 30th June 2022 and since the same was not extended, MSEDCL had called upon the Respondent to encash the stud Bank Guarantee and pay MSEDCL the same.

- 2.5. The Applicant submits that the Applicant vide letter dated 16th June 2022 had requested the Respondent to amend certain terms of the said Bank Guarantee and in this regard, the Respondent vide amendment letter dated 17th June 2022 amended the terms as requested by the Applicant of the Bank Guarantee.
- 2.6. The Applicant was shocked to know from the account statement sent to the Applicant on 20th August 2022 that the current balance with the Respondent was only INR 33,27,649 and an amount of INR 4,27,50,840 was adjusted/appropriated by the Respondent from the Fixed Deposit without any knowledge and/or consent of the Applicant. It is pertinent to note that the Respondent adjusted the said amount after the Liquidation Commencement Date initiated against the Corporate Debtor.
- 2.7. Applicant states that pursuant to the receipt of the aforesaid bank statement, the Applicant vide an email dated 30 August 2022 sought clarifications from the Respondent regarding the wrongful adjustment of a sum of INR 4,27,50,840 from the Fixed Deposit maintained by the Respondent. Further, the Applicant also sought clarification regarding under which provision of the Code, the aforesaid amount was adjusted by the Respondent.
- 2.8. On 22 November 2022, the Respondent responded to, the Applicant's queries/requests. The Respondent has made false statements in its letter dated 22 November 2022 that it has liquidated the Fixed Deposit and made payment to the beneficiaries i.e., MSEDCL
- 2.9. The Bank Guarantee was extended vide amendment dated 17 June 2022, therefore, if the bank guarantee was invoked by MSEDCL then there was no reason to extend the bank guarantee. Also,

MSEDCL vide its letter dated 07 October 2022 had returned the original Bank Guarantee having reference no. 0059BG00030612 to the Applicant. Therefore, it is not possible that MSEDCL would have invoked the said Bank guarantee.

- 2.10. The Respondent wrongfully appropriated the said Fixed Deposits. The Fixed Deposit, being an asset of the Corporate Debtor and the Respondent deciding to relinquish its security interest into the liquidation estate is against the principles of the Code and the Applicant states that the Fixed Deposit should form part of the liquidation estate of the Corporate Debtor and should be made available to the Corporate Debtor.
- 2.11. Despite writing multiple letters to the Respondent informing them about the fact and the legal provision governing the Fixed Deposit as security interest, it is pertinent to mention that no response received from the Respondent.
- 2.12. The Applicant vide letter dated 22 December 2022 responded to the letter dated 22 November 2022 issued by the Respondent. The Applicant in the said letter sought clarifications on the circumstances in which the Fixed Deposit was liquidated. Further, the Applicant also requested to provide the details regarding the bank guarantee(s) against which the Fixed Deposits are adjusted as well as the necessary documents pertaining to the same
- 2.13. Applicant submits that the said Fixed Deposit belongs to the Corporate Debtor and is considered as part of the Corporate Debtor's estate under the Code. Any wrong appropriation of the said Fixed Deposits is illegal and in violation of the provisions of the Code

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3. The Respondent ICICI Bank Limited has filed Affidavit in Reply stating that the Present Application is barred by limitation having been filed after a long delay and that Bank Guarantee does not form part of the Security Interest. It is further stated that the margin money in the Fixed Deposit lying against the Bank Guarantees in question as also not been appropriated as alleged and the same is still exist. It is also been argued that the margin money is not an asset of the Corporate Debtor.

3.1. In fact, the Respondent Bank has rightly appropriated the amounts of Margin Money in the Fixed Deposit of previously invoked Bank Guarantee being 624BG00001810 / 624BG00003316, 624BG00001910 / 624BG00003216, 624BG00001010 /624BG00003116, 624BG00001610 / 624BG00001710 on 07.09.2019 and 07.09.12.2019 for an amount of Rs. 4,27,50,820/.

3.2. The following table states the entire BG amount, Date Invocation, Margin Amount and FD dates.

S r n o	BG no	BG amount	Invocati on marked date	BG invoke d date	FD no.	FD amount (margin amount)	FD date
1	6242BG0000 3116	1,89,38,576. 00	17-09- 2018	21-09- 2018	624214053 866	14,20,393.0 0	21-09- 2018
					005914162 102	4,73,465.00	21-09- 2018
2	6242BG0000 3316	13,34,95,990 .00	17-09- 2018	21-09- 2018	624214053 866	1,00,12,199. 00	21-09- 2018
					005914162 102	33,37,400.0 0	21-09- 2018
3	6242BG0000 3216	33,54,01,806 .00	17-09- 2018	21-09- 2018	624214053 866	2,61,19,501. 00	21-09- 2018
					005914150 592	36,16,118.0 0	21-09- 2018
					005914151 009	4,11,072.00	21-09- 2018
					005914152 765	1,30,871.00	21-09- 2018
					005914156 002	32,62,618.0 0	21-09- 2018
6242BG0000 1610	71,50,657.00	17-09- 2018	18-09- 2018	624214053 866	7,10,197.00	18-09- 2018	
				005914159 168	2,36,732.00	18-09- 2018	
		49,49,87,029 .00				4,97,30,566. 00	

4. Heard learned counsel for the both sides and perused the materials available on record.

4.1. On perusal of the Bank Statement of account No. 624214053866 of the Corporate Debtor placed in the Application, we note that the Respondent Bank had appropriated a sum of Rs. 36131700/- on 07.09.2019 and another sum of Rs. 7109077/- on 07.12.2019. In the present case, the Applicant has himself admitted that Bank Guarantee was alive and renewed further on 16.06.2022. The Applicant has alleged that MSEDCL vide letter dt. 29.04.2022, informed the Respondent Bank that since Bank Guarantee bearing reference No. 0059BG00030612 for INR 46829500/- was expiring on 30.06.2022 and since the same was not extended, the MSEDCL had called upon the Respondent to encash Bank Guarantee and to pay the MSEDCL the same. Respondent Bank has clarified that against this Bank Guarantee they are holding a sum of Rs. 4404681/- in the Fixed Deposit and there is an existing lien for an amount of Rs. 12924580/- marked by Additional Tehsildar and Additional Tax Officer Betul, Madhya Pradesh and Assistant Commissioner, Sales Tax, Surat.

4.2. These facts clearly indicates that this Application has been filed under mistaken brief that the earlier appropriation of Principal Margin on 07.09.2019 and 07.12.2019 was in relation to 0059BG00030612 for INR 46829500/-. In fact, the earlier appropriation was in relation to other Bank Guarantees which has stated to have been invoked by the Beneficiaries. We note

that the Applicant has not controverted this position of the Respondent. It is trite law the margin money underlined the Bank Guarantee are Corporate Debtor's contribution towards the claim of beneficiaries in case of invocation and has rightly been appropriated by the Respondents. Further, in the case of *Punjab National Bank versus Supriyo Kumar Choudhary Resolution Professional [2022 SCC OnLine NCLAT 3924]*, it was held that *the banks having appropriated the margin money during the period of moratorium is justified as the margin money is not an asset of the Corporate Debtor*". Accordingly, we do not find any illegality in the appropriation of a sum of Rs. 43240777/- against the invoked Bank Guarantees.

4.3. At this juncture, we find that the Respondents are holding an amount of Rs. 4404681/- as Fixed Deposits Margin against the Bank Guarantee No. 0059BG00030612 which is already expired and admittedly surrendered to the Respondent Bank. Accordingly, we direct the Respondent Bank to refund this Amount along with interest accrued thereon to the Corporate Debtor, in so far as lien marked on the Current Account of Additional Tehsildar and Additional Tax Officer Betul, Madhya Pradesh and Assistant Commissioner, Sales Tax, Surat, is concerned, we are of the considered view that their claim shall be settled separately in terms of Section 53 of the Code and the assets cannot be held back on the ground of lien having been marked on the assets. We further clarify that the Applicant shall inform these Authorities to file a claim, if they have not filed the claim so far and deal with such claims in accordance with the provisions of the Code.



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5. In view of the above, the Interlocutory Application bearing IA No. 5481 of 2023, is dismissed and disposed of accordingly.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)