

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
26-06-2024 AT 10:30 AM**

**CP(IB) No.203/7/HDB/2022**

**AND**

**IA (IBC) 513 & 698/2024 in CP(IB) No.203/7/HDB/2022**

u/s. 7 of IBC, 2016

**IN THE MATTER OF:**

State Bank of India

**...Financial Creditor**

**AND**

Gati Infrastructure Bhasmeyer Power Private Ltd

**...Corporate Debtor**

**CORAM:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**IA (IBC) 513/2024**

Orders pronounced. In the result, **this application is allowed and disposed of. No costs.**

**IA (IBC) 698/2024**

Learned representing counsel Mr Amir Bavani, for applicant present through Video Conference.

It is represented that proof of service has been filed. As per the same the served on the first respondent. First respondent called absent. Service held sufficient. Set ex-parte.

For hearing, matter adjourned to 23.07.2024.

**Sd/-**

**MEMBER (T)**

**Sd/-**

**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – I**

**IA (IB) 513 OF 2024  
IN  
CP (IB) No. 203/7/HDB/2022**

*Application on behalf of the Resolution Professional under Section 60(5) r/w Section 17(D), 18 (F) and Section 25(2)(a) of the Insolvency and Bankruptcy Code, 2016*

**Between:**

**Anshul Gupta**

Resolution Professional

For Gati Infrastructure Bhasmey Power Private Limited

Address: 410, 4<sup>th</sup> Floor, Blue Rose,

Industrial Estate, Near Metro Mall,

Borivali East, Mumbai City, Maharashtra-400 066,

Email:- [contactanshulgupta@gmail.com](mailto:contactanshulgupta@gmail.com), [gaiinfra.abc@gmail.com](mailto:gaiinfra.abc@gmail.com)

**...Applicant**

**Versus**

1. **BANK OF INDIA**

PTI Building, Khairtabad Branch,

Hyderabad, Telangana – 500 004,

Email:- [khairatabad.hyderabad@bankofindia.co.in](mailto:khairatabad.hyderabad@bankofindia.co.in)

2. **POWER GRID CORPORATION OF INDIA LIMITED**

Saudamini Plot No.2,

Sector -29, Gurgaon,

Email:- [sanjay145@powergridindia.com](mailto:sanjay145@powergridindia.com)

[arkaprabhad@powergridindia.com](mailto:arkaprabhad@powergridindia.com)

**...Respondents**

**Date of Order: 26.06.2024**

**In the Matter of:**

State Bank of India

...Financial Creditor

Versus

M/s Gai Infrastructure Bhasmey Power Private Limited

...Corporate Debtor

**DATE OF ORDER: 26.06.2024**

**CORAM:-**

**Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member  
(Judicial)**

**Shri. Charan Singh, Hon'ble Member (Technical)**

**PARTIES/COUNSELS APPEARANCE: -**

For the Applicant : Mr. Milan Negi for the Resolution Professional

**PER: BENCH**

**ORDER**

1. This Application has been filed by Sh. Anshul Gupta, the Resolution Professional ('RP') of Gati Infrastructure Bhasmey Power Private Limited ('Corporate Debtor') under Section 60(5) read with Section 17(d), Section 18(f) & 25(2)(a) of the Insolvency and Bankruptcy Code, 2016 ('IBC') praying:

- a. To allow the present application.

**Date of Order: 26.06.2024**

- b. To direct the Respondent No.1 i.e., Bank of India to release the fixed deposit of Rs.77.27 Lakh lying in the account of the Corporate Debtor bearing no. 860920110000362 maintained with Respondent No.1 and to credit the same in the CIRP account of the Corporate Debtor maintained by the applicant in the name of “Gati Infrastructure Bhasmey Power Pvt Ltd., in CIRP” maintained with Axis bank Limited East of Kailash, New Delhi Branch, bearing account no. 923020025887776 and having IFSC code UTIB0000593;
- c. To direct the Respondent No.2 i.e., Power Grid Corporation of India Ltd., to return the original bank guarantee bearing no. CBG No. 6809/IFIBC:160016 for an amount of Rs.2.55 Crores, issued by the Corporate Debtor

2. **Gist of the Application:**

- 2.1 It is stated that on 28.06.2010, the Corporate Debtor had issued a construction bank guarantee bearing no. CBG No. 8609/IFIBG:160016 for an amount of Rs.2.55 Crores in favour of the Respondent No.2 (Power Grid Corporation of India Ltd), whereby issuing bank was Respondent No.1 (Bank of India), which guarantee was to expire on 27.10.2020. Further, the Corporate Debtor had made a fixed deposit of

**Date of Order: 26.06.2024**

Rs.77.27 Lakhs against the aforesaid bank guarantee no.2 deposited in the account of the Corporate Debtor, bearing account no. 860920110000362 maintained with the Respondent No.1 (Bank of India).

2.2 It is stated that vide order dated 24.04.2023 this Authority initiated the CIRP of the Corporate Debtor and Mr. Anshul Gupta appointed as a Resolution Professional of the Corporate Debtor. Copy of the admission order is as Annexed as **Annexure A- 2**.

2.3 It is stated that on 30.04.2023 public announcement in Form A was made in terms of Section 13 and 17 of IBC r/w Regulation 6(2)(c) of the CIRP Regulations in the following newspapers, thereby calling upon the creditors/stakeholders to submit their claims with the IRP till the last date of submissions i.e., 13.05.2023.

*a) Financial Express (English) and Nava Telangana (Hindi) – Hyderabad Edition*

*b) Sikkim Express (English) and Himani Bela (Local Language)- Sikkim Edition*

Copy of the public announcement is annexed as **Annexure A-3**.

**Date of Order: 26.06.2024**

2.4 It is stated that pursuant to the said public announcement, the applicant herein received claims from various creditors, which were subsequently collated, verified and the Committee of Creditors ('CoC') with sole financial creditor being State Bank of India, was constituted by the Applicant. On 29.05.2023 the CoC 1<sup>st</sup> meeting was held and approved the appointment herein as the Resolution Professional, which appointment was later confirmed by this Authority vide order dated 02.11.2023. Copy of the order dated 02.11.2023 is annexed as **Annexure A -4.**

2.5 It is averred that the financial documents/books of accounts and other records of the Corporate Debtor reviewed by the Applicant and learnt that the Corporate Debtor had issued a bank guarantee in favour of Respondent No.2 as per below mentioned details:

<b>CBG NO</b>	<b>Amount (in crores)</b>	<b>Date of issue</b>	<b>Validity</b>	<b>Issuing Bank</b>
8609/IFIBG: 160016	2.55	28.06.2010	27.10.2020	Bank of India (Respondent No.1) Hyderabad

2.6 It is averred that the Respondent No.2 issued a letter dated 24.11.2020, having ref. no. CC/CMG/CBG/Gati Infrastructure requesting the

**Date of Order: 26.06.2024**

Corporate Debtor to renew the said bank guarantee (expiring on 27.12.2020) and further, the extended validity of the said bank guarantee had expired on 23.12.2021. Copy of the letter dated 24.11.2020 is annexed as **Annexure A-5**.

2.7 It is averred that on 28.07.2023 the Resolution Professional issued notice to the Respondent No.2 and intimating it about the initiation of the CIRP of the Corporate Debtor and requesting them to return the original copy of the said bank guarantee to the Applicant in view of the moratorium in terms of Section 14 of IBC. Neither any response nor the original bank guarantee has been received by the Applicant/Corporate Debtor. Copy of the notice dated 28.07.2023 is annexed as **Annexure A-6**.

2.8 It is averred that the applicant learnt during the scrutiny of the balance sheet of the Corporate Debtor was also maintaining a bank account with the Respondent No.1 bearing account no.860920110000362 at Khairtabad Branch, Hyderabad and the said account was deposited with a deposit of Rs.77.27 Lakhs against the aforesaid bank guarantee issued to Respondent No.1. Copy of the relevant extract of the balance sheet of the Corporate Debtor for the financial year 2021-22, depicting the

**Date of Order: 26.06.2024**

details of the said fixed deposit and the bank guarantee is annexed as **Annexure A-7.**

2.9 It is averred that under Section 18(f) and 25(2)(a) of IBC in order to take the control and custody of the assets of the Corporate Debtor, on 28.09.2023 a communication was issued by the Applicant to the Respondent No.1 requesting to cancel all the existing accounting operation instructions (debt operations) in all the accounts of the CD with the Respondent No.1 with immediate effect and allow the operations of the accounts of the Corporate Debtor to the Applicant (RP) and further to provide all the statement of account of all the accounts of the Corporate Debtor with the Respondent No.1. Copy of the communication dated 28.09.2023 is annexed as **Annexure A-8.**

2.10 It is averred that the Applicant vide its emails dated 28.09.2023 and 29.09.2023 requested the Respondent No.1 to release the fixed deposit of Rs.77.27 Lakh and credit the same in the CIRP account of the Corporate Debtor. Copy of the email dated 28.09.2023 & 29.09.2023 is annexed as **Annexure A-9.**



**Date of Order: 26.06.2024**

2.11 It is further submitted that on 04.10.2023 & 05.10.2023 the applicant visited the concerned branch (Khairtabad Branch) Respondent No.1 and met with the Branch AGM again requesting them to release the said fixed deposit in terms of Section 14 of IBC. It is averred that on 06.10.2023 the applicant again requested through email to the Respondent No. 1 to release the said fixed deposit, as the fixed deposit was an asset of the Corporate Debtor and the applicant being the RP was duty bound to take into custody the assets of the Corporate Debtor in terms of Section 18(f) and Section 25(2)(a) of IBC. Copy of the email dated 06.10.2023 is annexed as **Annexure A-10**.

2.12 It is averred that repeated reminder emails on 07.10.2023, 02.11.2023, 02.12.2023 & 12.12.2023 being issued by the applicant, the Respondent No.1 failed to respond to the same and thereafter, the applicant had a telephonic communication with the bank official and in furtherance of the same, the applicant vide its email dated 26.12.2023 also shared the receipt dated 04.10.2023 evidencing the issuance of the intimation letter dated 28.09.2023 to the Respondent No.1. Copy of the email dated 07.10.2023, 02.11.2023, 02.12.2023, 12.12.2023 & 26.12.2023 exchanged between the parties is annexed as **Annexure A-11**.

**Date of Order: 26.06.2024**

2.13 It is further submitted that on 03.01.2024, the applicant also shared the order dated 05.10.2021 passed by the Hon'ble NCLT, New Delhi Bench in CP(IB) No. 456 of 2018, whereby the Hon'ble Tribunal while dealing with the similar issue had directed for release of the fixed deposit in favour of the Corporate Debtor therein. Copy of the email dated 03.01.2024 issued by the applicant along with the copy of the order dated 05.10.2021 is annexed as **Annexure A-12**.

2.14 It is averred that the Respondent No.1 on 16.01.2024 sent an email to the Applicant and stated that the release of the said fixed deposit shall be subject to the returning of the original bank guarantee and sought time for further clarification on the SBI order dated 05.10.2021 as shared by the Applicant, however the clarification is still awaited. Copy of the Respondent No.1 email dated 16.01.2024 is annexed as **Annexure A- 13**.

2.15 It is stated that the Respondent No.1 is under an obligation to release the said fixed deposit of the Corporate Debtor, lying under the lien of the Respondent No.1, after the commencement of the CIRP and in view of the moratorium imposed by this Tribunal in terms of Section 14 of

**Date of Order: 26.06.2024**

IBC, which mandates that neither any encumbrance can continue on the assets of the Corporate Debtor nor any action to foreclose or recover any security interest created by the Corporate Debtor in respect of its property can survive.

2.16 Further, the said condition imposed by the Respondent No.1 is no-est in view of the fact that the Corporate Debtor is undergoing CIRP, there is no bank guarantee alive in the present case (expired way back on 23.12.2021) and therefore, the ability of the Corporate Debtor towards the said bank guarantee is nil and therefore, the lien over such fixed deposit does not survive and becomes a free asset of the Corporate Debtor, which ought to have been returned/transferred by the Respondent No.1 immediately on the commencement of CIPR i.e., on or after 24.04.2023.

2.17 Further, the Respondent No.2 is also under an obligation to return the original bank guarantees to the applicant, since the same has expired way back on 23.12.2021 and not been returned despite request by the applicant. It is further submitted that in terms of Section 18(f) and Section 25(2)(a) of IBC the applicant/RP controlling the affairs of the Corporate Debtor is required to take into his custody any or all the assets

**Date of Order: 26.06.2024**

of the Corporate Debtor and in pursuance of the said duties, the applicant had bonafidely approached the Respondent No.1 to return/release the fixed deposit and credit the same in the CIRP account of the Corporate Debtor, which has been denied by the Respondent in complete contravention of the provision of the code.

2.18 It is stated that the said fixed deposit is an asset/property of the Corporate Debtor, which has wrongly been withheld or kept in lien by the Respondent No.1 and further the release/credit of the said fixed deposit will pool in further monies into the accounts of the Corporate Debtor, which will maximize the value of the assets of the Corporate Debtor and will eventually lead to the effective resolution of the Corporate Debtor.

2.19 It is stated that the applicant is therefore filling the instant application seeking appropriate directions to the respondent to release the fixed deposit of Rs.77.27 Lakhs, deposited by the Corporate Debtor in the account bearing number 860920110000362 maintained with the Respondent No.1 and credit of the same in the CIRP account of the Corporate Debtor maintained by the applicant, details of which are as follows:

Date of Order: 26.06.2024

*Name of Bank: Axis Bank Limited*  
*Account Holder: Gati Infrastructure Bhasmey Power Pvt. Ltd. In CIRP*  
*Branch: East of Kailash, New Delhi – 110065.*  
*Account Number: 923020025887776*  
*IFSC Code: UTIB0000593*

3. **On 02.04.2024 this Hon'ble Tribunal passed the order as follows:**

*“Proof of service filed as per the same Respondent Nos. 1 and 2 served through speed post. Service held sufficient. Respondent Nos 1 and 2 called absent and set ex-parte.”*

4. **The Counsel for the Applicant filed written submissions by reiterating the contents of the application, apart from that:**

4.1 It is stated that the Bank Guarantee in the present case is not an alive bank guarantee and has expired on 23.12.2021. Since, there is no invocation of bank guarantee, no liability towards such guarantee arises towards the corporate debtor. On expiration of the said guarantee, the money kept in FD has to be released into the account of the corporate debtor.

4.2 It is stated that Return of original bank guarantee cannot be a precondition for release of the FDR as the terms of the extension guarantee deed dated 24.12.2020 itself provides as under:

**Date of Order: 26.06.2024**

*“2. Notwithstanding anything contained herein before, our liability under this guarantee is restricted to Rs.2,55,00,000/-(Rupees Two Crores Fifty Five Lacs only) in the aggregate and it will remain in force till 23<sup>rd</sup> day of December, 2021. Unless a claim or demand in writing is made against us under this guarantee before the expiry of 23<sup>rd</sup> day of December, 2021, all your rights under the said guarantee shall be forfeited and we shall be relieved and discharged from all liability hereunder, irrespective of whether the original guarantee together with all extensions if any, returned to us.*

4.3 It is stated that while dealing with similar issue, the Hon’ble NCLT, New Delhi Bench vide order dated 05.10.2021 passed in CP No. 456 of 2018 titled Pallavi Joshi Bakhru Vs. Universal Buildwell Pvt. Ltd (on pg. no. 68, relevant para 28 to 30 @81-82), held that since the terms of the bank guarantee, itself provided that the return of original bank guarantee is not a condition precedent to release the fixed deposit in the bank account of the corporate debtor therein.

4.4 It is stated that the plea of return of the original bank guarantee for release of the fixed deposit cannot be a precondition for release of the fixed deposit by respondent no.1. However, without prejudice to the above, the applicant has also sought a prayer against the respondent no.2 for return of the original bank guarantee (expired).

Date of Order: 26.06.2024

4.5 It is stated that Section 18(f) and Section 25 of IBC, requires the RP to take control and custody of the assets of the Corporate Debtor, the fixed deposit in question therefor being sought to be taken control of by the RP.

4.6 It is further stated that the Hon'ble Appellate Tribunal, in the matter of Indian Overseas Bank Vs. Arvind Kumar, being Company Appeal (AT) (INS) No. 558 of 2020, has held that the money that is kept towards the bank guarantee has to be returned back to the corporate debtor, if the same expires without being invoked. Relevant extract of the judgment is provided herein below:

*“12. 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.*

4.7 Thus, it is clear that once the bank guarantee expires, without being invoked, the margin money/fixed deposit kept towards such bank guarantee must be returned back to the corporate debtor. Being so, the

Date of Order: 26.06.2024

respondent no.1 bank be directed to release the monies to the tune of Rs.77.27 Lakh, lying in the said FD, in favour of the corporate debtor.

5. We have perused the application, written submissions and other documents filed by the applicant and following point arises for our consideration:

**Point:**

**Whether prayers as sought by the Applicant for releasing margin money for the Bank Guarantee and returning of the original Bank Guarantee to the issuing bank can be granted?**

6. Both the Respondents remained absent inspite of service of notice and thus were set ex-parte and also none of them have filed any counter/reply to the application.
7. The Applicant submits that the Corporate Debtor has issued a Bank Guarantee of Rs.2.55 Crores in favour of Respondent No.2/Power Grid Corporation of India Limited which was issued by Respondent No.1/Bank of India and Corporate Debtor has made a fixed deposit of Rs.77.27 Lakhs with Respondent No.1 as margin money for the said Bank Guarantee.



**Date of Order: 26.06.2024**

8. The Applicant further submits that the said Bank Guarantee was last renewed on 24.12.2020 and its validity was extended up to 23.12.2021. Thus, learned counsel contended that the Bank Guarantee per se has already expired on 23.12.2021 and as per para 2 of the Bank Guarantee dated 24.12.2020, the Respondent No.1 is relieved and discharged from all his liabilities on the expiry of guarantee irrespective of the fact whether the original guarantee together with all extensions, if any is returned or not.
9. The Learned counsel further submitted that in view of the above facts of the case the Respondent No.1 may be directed to return the margin money for the Bank Guarantee to the Corporate Debtor and Respondent No.2 be directed to return the original Bank Guarantee as it is already expired.

**OUR ANALYSIS AND FINDINGS:**

10. We have carefully perused the extension letter of Bank Guarantee dated 24.12.2020 issued by Respondent No.1 and we find that it clearly contains a clause that Respondent No.1 will be relieved and discharged from its liabilities under the Bank Guarantee after expiry of the Bank Guarantee irrespective of the fact whether original guarantee is returned

Date of Order: 26.06.2024

or not. The same clause is reproduced hereunder for more clarity in the matter:

*“2. Notwithstanding anything contained herein before, our liability under this guarantee is restricted to Rs.2,55,00,000/-(Rupees Two Crores Fifty Five Lacs only) in the aggregate and it will remain in force till 23<sup>rd</sup> day of December, 2021. Unless a claim or demand in writing is made against us under this guarantee before the expiry of 23<sup>rd</sup> day of December, 2021, all your rights under the said guarantee shall be forfeited and we shall be relieved and discharged from all liability hereunder, irrespective of whether the original guarantee together with all extensions if any, returned to us.*

11. In the above backdrop, we do not find any reason for not releasing the margin money by the Respondent No.1 to the Corporate Debtor as the Bank Guarantee is already expired. We also place our reliance on the case laws quoted by Applicant wherein in the similar circumstances adjudicating authorities directed the Bank to return the margin money to the Corporate Debtor. Accordingly, the point is decided in affirmative.
  
12. In view of the above, we direct Respondent No.1 to release the fixed deposit of Rs.77.27 Lakhs along with interest to the Corporate Debtor within a period of 15 days from the date of this order and file compliance memo for the same. Respondent No.2 is directed to return the Original Bank Guarantee to the Respondent No.1 within a period of

Date of Order: 26.06.2024

15 days. In case of noncompliance of this order, the applicant is at liberty to approach this Tribunal for execution of this order as per law.

13. Accordingly, the IA.No.513 of 2024 is allowed and disposed of, without any costs.

**Sd/-**

Charan Singh  
Member Technical

*Sridher*

**Sd/-**

Dr. Venkata Ramakrishna Badarinath Nandula  
Member Judicial