

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1349 of 2025

[Arising out of the Impugned Order dated 13.08.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-I in I.A. No. 2921 of 2025 in C.P. (IB) 973 (MB) of 2020]

In the matter of:

Indian Overseas Bank

A Body Corporate constituted under the Banking Companies (Acquisitions and Transfer of undertakings) Act, 1970 having its central office at 762/763, IOB, Anna Salai, Chennai, Tamil Nadu 600002
Through its Authorised Representative Nitin Shrivastava Chief Manager of Indian Overseas Bank, Mall Road Branch, Kanpur having his office at:
Indian Overseas Bank,
Mall Road Branch,
17/9-A, Garg Narohna Complex,
Mall Road, Kanpur – 208001

.... Appellant

Versus

1. Bank of India

A Body Corporate constituted under the Banking Companies (Acquisitions and Transfer of undertakings) Act, 1970 having its head office at Star House, C-5 Block, Bandra Kurla Complex, Bandra (East)- 40005 and having its branch at Asset Recovery Branch, Nawal Kishore Road, Hazaratganj, Lucknow - 226001
Through its Authorized Officer Mr. Sunil Prasad, Assistant General Manager

.... Respondent No.1

2. Mr. Amit Chandrakant Shah

Resolution Professional in the matter of CIRP of Frost International Limited having IBBI Registration No. IBBI/IPA-001/IPP-082112017- 2018111397 and Having his address at A-74, Roop Darshan Building Juhu Cross Lane,

C. D. Barfiwala Marg, Behind New India Colony,
Andheri West, Mumbai - 400058

.... Respondent No.2

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. J. Rajesh, Mr. Arshlan Ahmed, Yashudhan Agarwal, Dhruvad Vaghani, Gayatri Mohite, Kamakshi Maine and Ajiz MK, Advocates.

For Respondent : Mr. Krishnendu Datta, Sr. Advocate with Ms. Smriti Churiwal, Mr. Jaiveer Kant, Mr. Indrajeet Deshmukh, Ms. Meher Thapar, Mr. Harsh Gurbani, Advocates. Mr. Harshit Chowdhary and Mr. Yash Tandon, Advocates for R1.

Mr. Varun Kalra and Shohan Ulla, Advocates for R2.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 13.08.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-I) in I.A. No. 2921 of 2025 in C.P. (IB) 973 (MB) of 2020. By the impugned order, the Adjudicating Authority has directed that an amount equivalent to 5% of the FLC/LC/BG be excluded from the total assets of the Corporate Debtor subject to maximum of the fair value of the subject property and that such amount would belong to the Respondent No.1. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. Coming to the brief facts of the case, the Corporate Debtor-Frost International Ltd. was admitted into CIRP on 09.02.2023. A consortium of banks

including the Appellant, Respondent No.1 and other banks had sanctioned multiple credit facilities aggregating to an amount of Rs 756.75 Cr. to the Corporate Debtor vide sanction letter dated 05.09.2017. Barring Rs 30.75 Cr. which had been sanctioned as fund-based facilities, the remainder was for non-fund-based facilities viz. Foreign Letters of Credit (“**FLC**” in short); Letters of Credit (“**LC**” in short) and Bank Guarantees (“**BG**” in short). For the non-fund-based facilities, the Respondent No.1-Bank of India (“**BOI**” in short) had taken a margin of 10% in form of primary security of Term Deposit Receipts (“**TDR**” in short) and 5% as collateral security was secured by way of equitable mortgage over property located in Bandra (hereinafter referred to as “**subject property**”) which according to the Respondent No.1 was purportedly exclusively charged for 5% margin. The BG stood invoked on 04.07.2012 and the LCs had devolved between 11.04.2018 and 10.09.2018 which all pre-dated insolvency commencement date. Section 7 application had been admitted against the Corporate Debtor on 09.02.2023 following which the Interim Resolution Professional came to be appointed who was confirmed later as Resolution Professional (“**RP**” in short). On 23.02.2023, the Respondent No.1 had filed claim in Form-C with the Respondent No.2-RP following which a sum of Rs. 10,12,49,15,522/- was admitted. The Respondent No.1 was categorized as a Financial Creditor of the Corporate Debtor. The Respondent No.1 while filing Form-C had detailed the securities which were held as a Consortium Member and securities which were exclusively held by Respondent No.1. The present dispute arises from a challenge to the *inter se* distribution criteria being followed by the CoC for payment to the Financial Creditors on the basis of their admitted

claim ratio and not on the basis of their respective security interests. During the 40th meeting of the Committee of Creditors (“**CoC**” in short), the Respondent No.1 holding 12.77% of vote share objected to the distribution pattern as it did not exclude the exclusive security interest in the form of margin money over the subject property. The matter was deliberated by the CoC members in the 41st meeting on 11.06.2025 wherein it was decided with 85.69% majority that distribution of payment to secured creditors shall be based solely on their admitted claim ratio. An e-mail dated 17.06.2025 was sent by the Respondent No. 1 to the RP claiming that 5% margin was secured by the subject property had not been factored in the distribution proceeds which was objectionable. At this stage, the Respondent No.1 aggrieved with the decision of the 41st CoC to distribute the proceeds on a pro-rata basis with respect to their admitted claims ignoring security interests in form of margin money filed IA No. 2921 of 2025 before the Adjudicating Authority challenging the said resolution approved by the CoC. When the matter came up before the Adjudicating Authority, it directed that an amount equivalent to 5% of the FLC/LC/BG be excluded from the total assets of the Corporate Debtor subject to maximum of the fair value of the subject property and that such amount would belong to the Respondent No.1. Aggrieved by the impugned order, the Appellant-Indian Overseas Bank (“**IOB**” in short) which is also a Secured Financial Creditor and is a member of the CoC with 20.95% vote share has preferred this appeal by contending that the Respondent No.1 having accepted margin to the extent of 5% as collateral security in the form of equitable mortgage of the subject property cannot seek to appropriate the margin without enforcing its security interest.

3. Making his submissions, Shri Abhijeet Sinha, Ld. Senior Advocate on behalf of the Appellant submitted that following the issue of public announcement by the RP, the Respondent No.1 had filed their claim of which an amount of Rs 10,12,49,15,522/- was admitted and an amount of Rs 33,17,240/- was kept under verification. Basis the admitted claims, the RP had invited Expression of Interest from prospective applicants which was reflected in the Information Memorandum and RFRP. The resolution applicants would have factored in the security interests while determining the financial outlay and structuring of their plans. The Adjudicating Authority by now treating the subject property as margin, would impact the plan proposals of the prospective resolution applicants and derail the resolution process prejudicing the interest of the creditors. This also amounted to a modification of the plan and the claim for excess recovery being beyond the terms of the plan was impermissible in law.

4. It was vehemently contended that the impugned order by treating the immovable subject property as margin without noticing that it was in the form of an equitable mortgage committed an infirmity. Even the Form-C submitted by Respondent No.1 referred to the subject property security as an equitable mortgage. Without enforcing the security interest in the form of equitable mortgage, the margin remained not with the bank but with the Corporate Debtor. The margin not having been appropriated by Respondent No.1, with the commencement of CIRP and moratorium provisions having come into play, it prohibited any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its assets. The Respondent No.1 is

therefore precluded from asserting indirectly what cannot be enforced directly under the guise of margin.

5. Further submission was made that the 41st meeting of the CoC had resolved with 85.69% vote share that distribution to all secured creditors would be made on the basis of their respective admitted claim ratios. When the security interests of the Respondent No.1 was fully protected by the equitable mortgage, any additional exclusion of the margin money from the asset pool tantamount to giving double benefit to the Respondent No.1 at the cost of the other creditors. The Adjudicating Authority by directing the exclusion of 5% of the devolved FLC/LC/BG from the asset pool of the Corporate Debtor had exceeded its jurisdiction and acted contrary to the commercial wisdom of the CoC. Such exclusion is contrary to the *pari passu* distribution as envisaged in the waterfall mechanism under the IBC. This interference with the commercial wisdom of CoC directing exclusion of the value of the margin money from the assets of the Corporate Debtor which formed part of the distribution framework was not in accordance with judicial precedents. This amounted to effectively rewriting the distribution mechanism by the CoC and substitution of the views of the CoC.

6. Refuting the contentions of the Appellant, Shri Krishnendu Datta, Ld. Senior Advocate on behalf of Respondent No.1 submitted that the Respondent No.1 had provided FLC/LC/BGs to the Corporate Debtor. To secure the FLC/LC/BGs, the Corporate Debtor had issued TDRs as margin to the extent of 10%. All the other members of the CoC including Respondent No.1 had already appropriated the margin money held in the form of TDR. In addition to the TDRs, a 5% margin had also been secured in the form of exclusive charge over the

subject property and this was clearly mentioned in the sanction letter dated 05.09.2017. It was contended that since the subject property was part of margin, the subject property ceased to be the property of the Corporate Debtor and was only held in trust by the Corporate Debtor. To buttress their contention, it was contended that in terms of the ***Supriyo judgment supra*** margin money is construed as a substratum of trust created to pay the beneficiary. Once the asset goes into trust by documentation for the benefit of beneficiary, the original owner does not have any right over the asset until it is free from the trust. The subject property therefore cannot be made to form part of the common pool of assets or subject matter of the resolution plan. The margin money had already been allocated prior to initiation of the CIRP of the Corporate Debtor and therefore cannot be considered as an asset in the hands of the Corporate Debtor. The subject property had acquired the character of a trust and to treat it otherwise would be in the teeth of Sections 18 and 36(4) of the IBC. The CoC members by ignoring security interest in the form of margin and in not allowing the Respondent No.1 to appropriate the 5% margin money held in the subject property were trying to cause great prejudice to their interest. The distribution criteria for payments proposed by the CoC is flawed since it has disregarded the fact that Respondent No.1 was entitled to 5% margin for FLC/LC/BG sanction to the Corporate Debtor for which purpose the subject property was exclusively charged to Respondent No.1. It was also added that Respondent No.1 had commenced SARFAESI proceedings before the ACJM, Mumbai for appropriating the subject property towards its margin as far back as in 2021 which was clearly during pre-CIRP period. Admittedly the process could not be completed on

account of CIRP proceedings, but that was the only recourse available in law to recover the margin held in the subject property. It is submitted that an amount of Rs 35 Cr. is the fair value of the subject property. The 5% margin had therefore to be carved out from the distribution mechanism in favour of Respondent No.1 in view of the exclusive charge it enjoyed on the subject property. The Adjudicating Authority had therefore rightly allowed IA 2921 of 2025 and directed that an amount equivalent to 5% of the FLC/LC/BG be excluded from the total assets of the Corporate Debtor for release to the Respondent No.1 towards margin.

7. We have heard the Ld. Counsels for both the parties and perused the records carefully. The limited issue before our consideration is whether the Adjudicating Authority was justified in going beyond the terms of the resolution plan approved by the CoC in hiving of 5% from the assets of the Corporate Debtor and assigning the same for distribution as margin to the Respondent No.1 in respect of equitable mortgage in the subject property held as collateral security.

8. It is the case of the Appellant that following the initiation of CIRP of the Corporate Debtor, all assets of the Corporate Debtor including those subject to security interest were to be consolidated together for distribution of proceeds amongst the creditors towards facilitating resolution of the Corporate Debtor. Submission was pressed that the resolution applicants had already structured their resolution plans by factoring together all the assets of the Corporate Debtor including those subject to security interest. Contention was also made that without recognizing the fact that the subject property in the form of equitable mortgage was in the nature of security interest, the Adjudicating Authority had

erroneously treated the subject property as margin and allowed exclusion of the same from the assets of the Corporate Debtor. The impugned order by treating the subject property as margin and excluding the same from the asset of the Corporate Debtor and assigning the same to the Respondent No.1 amounted to liquidation of the subject property akin to Section 52 of the IBC which is impermissible during CIRP. In any case, without enforcing the security interest, the same could not have been allowed to have been appropriated as margin. Further with the commencement of CIRP and the moratorium provisions coming into play, it prohibited any action to foreclose recover or enforce any security interest created by the Corporate Debtor in respect of its assets held in the form of an equitable mortgage. It is vehemently contended that the impugned order also amounts to modification of the plan which had been approved by the CoC.

9. Per contra, it is the contention of the Respondent No.1 that creation of margin money was a precondition before the grant of FLC/LC/BG facilities to the Corporate Debtor for which they had taken a margin of 10% in the form of TDRs and 5% in the form of the subject property on which an exclusive charge was created for the purpose of utilization as margin money. Contending that margin money can be held both in liquid form and in the form of fixed asset, it was asserted that there was nothing anomalous that the 5% margin in the subject property was carved out from the distribution of proceeds in favour of Respondent No.1 by the Adjudicating Authority. It was vehemently contended that the sanction letter dated 05.09.2017 had clearly noted that 5% margin was also secured in the form of exclusive charge on the subject property. Hence, the 5% margin did not form part of the Corporate Debtor's asset having acquired the

character of a trust. It was added that once an asset goes into trust, the original owner ceases to have any right over the asset until it is free from the trust. In support of their contention, reliance has been placed on the judgment of this Tribunal in ***PNB Vs Supriyo Kumar Choudhary in CA(AT)(Ins) No. 657 of 2020*** wherein it was held that margin money is construed as a substratum of trust created to pay the beneficiary. In the present facts of the case, since the elements of creation of trust are clearly made out, the subject property must be considered to be held in trust and therefore the Adjudicating Authority had correctly set aside the margin amount to be distributed solely to the Respondent No.1 from the amounts to be received under the prospective resolution plans.

10. To arrive at our findings, it would be useful and constructive to have a look at the sanction letter of 05.09.2017 to appreciate the nature of securities created. The sanction letter has been placed on record by the Respondent No.1 at page 9 of their additional affidavit. We propose to extract Annexure-III of the said sanction letter on the securities proposed which is as under:

Sanction Letter

To:
M/s Frost International Ltd.
402, Kalpana Plaza,
24/147-B, Birhana Road,
Kanpur - 208001.

Ref.No.KMC/ADV/17-18/025

Dated: 05.09.2017

***Your request for Credit facility(ies)
Sanction/Review of Credit Facility(ies)***

We invite reference to your request for credit facility(ies)/enhancement in credit facility(ies) and are pleased to offer you, the credit facility(ies) as per Annexure-1 on the broad terms and conditions mentioned in Annexure II to Annexure VI of this letter. Notwithstanding anything to the contrary stated or suggested herein, the outstanding indebtedness,

whether actual or contingent, under these facilities is subject to liquidation by you, on first demand by us.

This letter is issued in duplicate. Please return duplicate copy duly signed by an authorised signatory in token of having accepted the terms and condition.

Yours faithfully
For Bank of India

AUTHORISED SIGNATORY

Annexure-III

Primary and Collateral Security proposed. (Rs. in Crores)

15	Security	Particulars	Remarks	Value	
				Total	Our share (15.82%)
	Principal	1 st pari-passu charge over stocks and book debts for WCFBL	Provisional B/s as on 31.03.2017	3922.53	620.54
		Pledge of TDR's (for LC DP/DA 180 days) @ 10% margin	Upon full utilization	446.80	70.00
		TOTAL PRIMARY SECURITY		4369.33	690.54
	Collateral	EQM of properties listed as under on first Pari Passu basis (Annexure IV)		127.18	20.08
		Pledge of TDRs with member banks on pari passu basis		50.56	8.00
				3.27	0.52
		Shortfall in value of Kolkata Property by way of immovable property		30.00	4.75

		<i>Additional security by way of immovable property for proposed additional limit of Rs.600 crs (for consortium)</i>		38.10	38.10
		<i>EQM of property situated at Office Unit No.709, 7th Floor, C Wing bldg., One-BKC, Bandra, Distt. Mumbai -400051 in the name of Frost Internal Ltd. (Exclusive charge for 5% margin for FLC/LOC/BG)</i>			
		<i>Total Collateral Security</i>		249.11	71.45
		<i>Total Security</i>		4618.44	761.99

(Emphasis supplied)

11. When we examine the above sanction letter, we find that to secure the BG/LC/FLCs, the Corporate Debtor had issued TDR as margin to the extent of 10% and a 5% margin was secured in the form of exclusive charge of the subject property. We also notice that the subject property held in the form of equitable mortgage has been depicted as “Collateral Security”. The Respondent No.1 however emphasized that the sanction letter also reflected the purpose of the security as one made towards “Exclusive Charge” for 5% margin for FLC/LC/BG. On perusal of the sanction letter, prima facie, we are of the view that the subject property in equitable mortgage has been included as “Collateral Security”. Even if the purpose for which the security was extended was for purposes of margin,

		Collateral Security: on 1st Pari passu basis, EQM of properties	
		<i>of which details are under:</i>	
		<i>Market Value</i>	<i>Our Share</i>
		Rs. 224.37	Rs. 72.14
		Crore	Crore
		<i>Realisable Value</i>	<i>Our Share</i>
		Rs. 205.25	Rs. 65.90
		Crore	Crore
		<i>D. S. Value</i>	<i>Our Share</i>
		Rs. 189.78	Rs. 60.14
		Crore	Crore
		<i>Name and address of guarantors are given in separate list.</i>	

When we look at Form-C above, we find that the Respondent No.1 has referred the subject property as “Collateral Security” held as an equitable mortgage on 1st *pari passu* basis. There is clearly no mention of margin in the Form-C in respect of the subject property.

13. With a view to dive deeper into the sequence of events following the admission of the Corporate Debtor into CIRP to find out how the subject property was projected during CIRP proceedings by the Respondent No.1, we now proceed to the relevant meetings of the CoC wherein the *inter se* distribution of plan proceeds was discussed and deliberated upon. The 40th meeting of the CoC held on 03.06.2025 had taken up the subject matter of “Distribution Criteria for the payment to Financial Creditors” which appears at page 137 of the Appeal Paper Book (“**APB**” in short) which is as reproduced below:

“Distribution Criteria for the payment to Financial Creditors:

BOI asked the Chairman whether the distribution pattern is decided and in response to the same, the Chairman replied that distribution pattern was discussed in the earlier CoC meetings and accordingly, the

distribution was worked out as per the admitted claim ratio. BOI informed that some lenders may have exclusive charge on the certain assets and how the interest of that lender would be taken care of. BOI further asked the Chairman why exclusive security aspect is not factored in the Distribution working and in response to the same the Chairman informed that the lenders who hold exclusive security have not informed to factor the same or not discussed this point in any of the earlier CoC meetings. The Chairman informed that if CoC decide to go ahead with Distribution pattern after factoring Security Interest on the basis of exclusive charge, he has no issue with the same. He is just giving factual statement that it was decided earlier that distribution will happen on the basis of admitted claim ratio. The Chairman said that if CoC thinks that we should opt for different mechanism of distribution then we can go ahead with the same and he has no issue. He further apprised that as per his understanding, no lenders have given details of any exclusive security except IOB, who has exclusive security of Windmill related assets, whose value is not substantial. DSK Legal has worked out the Security Interest table accordingly. He further said that the lenders who have exclusive charge on Security Interest have never approached him and said that they want distribution on the basis of security interest and now if CoC wants different mechanism for the distribution then let us discuss in today's CoC meeting and change the same. It is CoC's prerogative to finalize the same. He then requested CoC members to decide on the same.

....

The Chairman once again requested to decide this matter on the basis of physical voting and in response to the same, BOI replied that they would need 24 hours' time to come back on the same. He apprised that they will have to approach their authorities, do working as per their policy and only then they will come back.....

(Emphasis supplied)

From the minutes of the 40th CoC meeting as reproduced above, we find that even at this stage when distribution criteria was being discussed, the Respondent No.1 has only referred to their exclusive security interest without any hint of margin in respect thereof. We also find that the RP in all fairness

requested the CoC members to decide the matter as to whether the distribution would happen on the admitted claim ratio or by factoring in security interest.

14. This brings us to the minutes of the 41st CoC meeting held on 10.06.2025 wherein the distribution criteria for payment to secured creditors was taken up for discussion and approval. The relevant minutes are as reproduced below:

5. TO DISCUSS AND APPROVE DISTRIBUTION CRITERIA FOR THE PAYMENT TO SECURED CREDITORS, PURSUANT TO THE REQUEST RECEIVED FROM BANK OF INDIA VIDE THEIR E-MAIL DATED 6TH JUNE 2025.

“...The Chairman apprised that BOI has proposed distribution based on Security Interest and accordingly prepared distribution working. He further apprised that post last CoC meeting, he received few inputs from BOI and IOB. He apprised that BOI had stated that it had exclusive charge on One BKC Property at Mumbai. He informed that BOI subsequently provided the required documents to support their claim and the same were shared with DSK Legal to assess. He further informed that DSK Legal has confirmed exclusive charge of BOI on One BKC Property at Mumbai. DSK Legal has also stated that BOI has an exclusive charge over One BKC property for both its individual lending and as part of BOI's share of consortium lending. However, BOI has not provided the required break-up of their claim amount into consortium lending and individual lending.

....

The Chairman apprised that these two things cropped up after the last CoC meeting and he shared all the supporting documents shared by BOI and IOB with DSK Legal and DSK Legal has verified and confirmed as follows:

- a. BOI has an exclusive charge over One BKC property for both its individual lending and as part of BOI's share of consortium lending.*
- b. IOB has an exclusive charge over windmill Project at Chennai and Greater Kailash Property at New Delhi for their tending for specific projects.*

The chairman said that these changes have happened with respect to the Security Interests of the lenders from last CoC meeting. He requested

CoC members to discuss, debate and decide how they would like to proceed....

....

Then, BOI brought Section 30(2)(b) of IBC to the notice of all the CoC members and said that in case BoI would become dissenting financial creditors, BOI would get Rs. 43 Crs, as per distribution working shared by them and there is no incentive for BOI to accept Rs. 23 Crs. which is their share on the basis of Admitted Claim Ratio as per the H1 plan, i.e., the plan submitted by Greensward Enterprise Private Limited ("Greensward")....

(Emphasis supplied)

When we look at the above minutes of the 41st CoC meeting it is clear that the RP had placed on record the fact that the present Appellant and Respondent No.1 had exclusive charge over certain properties. We also notice that the Respondent No.1 had also observed that there was no incentive for them to accept the distribution criteria on the basis of admitted claim ratio. However, there is no mention of the exclusive charge by either of the parties as margin.

15. The 41st CoC meeting was however adjourned on 10.06.2025 and reconvened on 11.06.2025 wherein the distribution criteria by admitted claim ratio was accepted by 85.69% of the CoC members while the Respondent No.1 had conveyed that their views would be conveyed after discussion with their controlling authority. The Respondent No.1 had thereafter conveyed to the RP by e-mail on 12.06.2025 their objections to the proposed pay-out seeking revision of the distribution pattern to reflect their exclusive security interest and *pari passu* security interest which is placed at page 169 of APB. Even until this stage, we find that the Respondent No.1 has only referred to the subject property as exclusive security interest but there is no talk of margin until this stage.

16. The first time that the Respondent No.1 claimed that margin available to them in the form of exclusive security on the subject property requiring exclusion from the asset pool of the Corporate Debtor was made on 17.06.2025.

The said e-mail addressed to the RP is as reproduced below:

From: Ranjit Bose on behalf of Lucknow Recovery
<Recovery.Lucknow@bankofindia.co.in>

Sent: Tuesday, June 17, 2025 4:51 PM

Sir,

With reference to trail mail, we provide the detail of exclusive security

1. As per sanction note, a NFB limit of Rs. 4468 cr was sanctioned wherein BOI exposure was Rs. 700.00 cr. The margin prescribed for this exposure was 15% which have been taken by BOI in form of TDR 10% and balance 5% as exclusive security situated at office unit no. 709, 7th Floor, C Wing Building, One BKC, Bandra Kurla Complex, Mumbai 400051.

2. All lenders have appropriated margin available in form of TDR including us subsequently. However, margin available in form of immovable property could not be appropriated due to its nature.

3. The margin of 5% on basis of exposure works out to Rs.35.00 crore, an approx. valuation of immovable property exclusively taken by BOI.

Hence, we advise you to recalculate distribution pattern based on the information and also request you to hold the voting process until the revision is completed.

We attach the following for your ready reference.

1. Sanction letter dated 05.09.2017 (Pl refer Page-5)

2. Sanc Memorandum Dated 22.08.2017 (Pl refer Page 10)

(Emphasis supplied)

17. Drawing attention to the definition of 'Margin Money' in Advanced Law Lexicon, 5th Edition by P. Ramanatha Aiyar and Black's Law Dictionary, 8th Edition being like that of a security deposit retained by the banks till the loan is

fully settled, it is the contention of the Respondent No.1 that the above e-mail dated 17.06.2025 clearly showed that a part of the margin money was in the form of immovable property and that an exclusive charge on the subject property had been created for the purpose of utilization towards margin money. It was therefore contended that the distribution criteria for payments to the creditors proposed by the CoC was flawed as it ought to have excised and excluded the subject property from the assets of the Corporate Debtor as the subject property having been exclusively charged to the Respondent No.1 for the purposes of maintaining 5% margin money was therefore an asset of the Respondent No.1.

18. Expanding their arguments further, it was stated that this 5% margin money in the form of exclusive charge over the subject property did not form part of the assets of the Corporate Debtor. It was asserted that the margin money had acquired the character of a “trust” and an asset held under “trust” cannot be included in the asset pool of the Corporate Debtor. It was submitted that the Hon’ble Supreme Court in ***Operation Asha Vs Shelly Batra and Ors., 2025 SCC OnLine SC 1605*** has propounded the elements required for the fulfilment of a ‘trust’ and in the present case all elements of the subject property being held in the nature of trust stood fulfilled. Firstly, the Corporate Debtor as owner of the subject property had deposited the margin money in the form of TDRs and exclusive charge for 5% margin on immovable property to the Respondent No.1. Secondly, the Respondent No.1 had accepted the margin money by virtue of the confidence reposed by Corporate Debtor. Thirdly, the margin money was accepted for the benefit of another party. Lastly, the intention for creation of

margin money as trust is evident from the sanction letter dated 05.09.2017 and the FLC/LC/BG facilities sanctioned to the Corporate Debtor.

19. Buttressing their argument further, support was drawn from the judgment passed by the Hon'ble Bombay High Court in ***Reserve Bank of India Vs Bank of Credit and Commerce International (Overseas) Ltd. and Anr. 1992 SCC OnLine Bom 528*** which had held that margin money is impressed with the character of trust for the benefit of the beneficiary as long as the LC is alive and cannot be considered to be a property of the Corporate Debtor. Elaborating further, attention was adverted to the judgment of this Tribunal in ***Supriyo Kumar Choudhary judgment supra*** in that it had authoritatively held that margin money is to be construed as a substratum of trust created to pay the beneficiary. It was contended that irrespective of the nature of property, whether movable or immovable, once any property is advanced as margin money, it gets impressed with the character of trust and the margin money can in no manner be said to be 'security interest' as defined under Section 3(31) of the IBC. Once the asset goes into trust by documentation for the benefit of beneficiary, the original owner will not have any right over the asset unless it is free from the trust. Hence, the subject property in the present case ceased to be the property of the Corporate Debtor as it was held in trust by the Corporate Debtor. Submission was pressed that there can be no differential treatment of margin money whether it is in the liquid form like TDR or in the form of fixed-asset like immovable property. In the present case, when the other members of the CoC had appropriated their margin money in the form of TDR, the breach of facility sanction led as much to the forfeiture of the margin held in the subject property,

yet the Respondent No.1 was being prevented from appropriating its 5% margin money over the subject property which was exclusively charged to them. The Adjudicating Authority had therefore correctly passed the impugned order setting aside the margin amount held in the subject property from the amount receivable under the prospective resolution plan to be distributed solely in favour of the Respondent No.1.

20. Coming to our findings, we have no quarrel with the proposition of law laid down in the ***Supriyo Kumar judgment supra*** which held that margin money is construed as a substratum of a trust created to pay to the beneficiary to whom BG is given. The relevant paragraph of the above judgment is as reproduced below:

“18. Margin money is construed as substratum of a Trust created to pay to the beneficiary to whom Bank Guarantee is given. Once any asset goes into trust by documentation for the benefit of beneficiary, the original owner will not have any right over the said asset unless it is free from the Trust. As we observe that margin money has the character of Trust for the benefit of the beneficiary, it cannot be said to be an asset of the ‘Corporate Debtor’. These FDRs cannot be realized by the ‘Corporate Debtor’ as and when it desires. The margin money is deposited in the FDRs which the ‘Corporate Debtor’ becomes entitled to only when the Margin Money is free from the obligations of the terms of the LC.”

Be that as it may, the distinguishing facts of the ***Supriyo Kumar judgment*** lies in its factual matrix. Here the margin money was in the form of a deposit held with the bank. On the other hand, in the present case, the margin is in the form of equitable mortgage over an immovable property of the Corporate Debtor which clearly was not enforced. It is also pertinent to note that unlike a TDR, an equitable mortgage does not involve any deposit with the bank. The equitable

mortgage is a security interest created over an immovable property which remains with the borrower and until the charge on the immovable property is enforced, till then, the immovable property remains the asset of the borrower.

21. Thus, though the margin can be held in liquid form of deposits or in the form of fixed asset, the principles governing the appropriation of margin held in liquid form like TDR is patently different from appropriation of margin held as security interest in the form of fixed assets since the latter requires to be enforced. In the present case, the Respondent No.1 by accepting margin in the form of security interest over the subject property, it is a given that the requirement for enforcement of security interest was accepted by Respondent No.1 to be the mode by which the margin was to be appropriated. When the margin money was not in the form of deposit like TDR but in the nature of security interest through an equitable mortgage, unless this mortgage was enforced, the subject property clearly remained an asset of the Corporate Debtor. The security unless enforced does not acquire the character of a trust property.

22. Having said that we now proceed to find out whether the mortgage was enforced or whether the subject property still remained an asset of the Corporate Debtor. The ratio of the ***Supriyo Kumar judgment supra*** was applicable where the performance guarantees which were alive had been invoked. Margin money takes a character of trust property only when deposits are held exclusively to secure the banks obligations to third party beneficiaries under live BGs. We need to find out whether the guarantee was alive in the present facts of the case. In the present case, admittedly the BG had been invoked on 04.07.2012 which date was much prior to the insolvency commencement date. The FLC/LC had also

devolved between 11.04.2018 and 10.09.2018 which was again much before CIRP commencement date. On a query made by the RP on 08.07.2025 which is placed at page 32 of the additional affidavit of Respondent No.1 seeking clarification as to whether there were live guarantees in favour of Respondent No.1, we find that the Respondent No.1 in their reply dated 14.07.2025 has admitted that no live guarantees were in existence. The said reply e-mail is as reproduced below:

*“From: Ranjit Bose on behalf of Lucknow Recovery
Recovery.Lucknow@bankofindia.co.in
Sent: Monday, July 14, 2025 1:57 PM
To: cirpfil@gmail.com*

Sir,

We refer your email dated 08.07.2025 & 09.07.2025 on the captioned matter.

Please find attached the List of Invoked BGs and Devolved LCs in the account of M/s Frost International Ltd. alongwith the copy of Sanction Letter Dated 05.09.2017.

Bank of India had sanctioned the limits Rs.756.75 Crores out of which Rs 0.75 Crore as Cash Credit and Rs 30.00 Crore as EPC/ FBP Total Fund Based was Rs 30.75 Crores. The remaining amount was Non-fund based limit consisting of FLC / LOC / BG. For the non-fund based facilities, the bank has taken total margin of 15% out of which 10% in the form of TDR & 5% in the form of exclusive security by creation of equitable mortgage of the property situated at BKC, Mumbai having valuation to the tune of 38.00 Crores.

Further With reference to your Previous trail mail dated 8th July 2025, please find our pointwise reply as under:

1. That there are no live Bank Guarantees at present. The LCs have been devolved. Our limits/ facilities are duly contained in the Sanction Letter dated 05.09.2017 and all the funding EPC, LC, LOC, and BG were a part of Consortium funding. Standalone funding was proposed but not released at the last moment.

2. Please refer our reply as in point no. 1.

3. The credit facility advanced to the company was Rs. 756.75 Crs out of which Rs 0.75 Crore as Cash Credit and Rs 30.00 Crore as EPC/ FBP Total Fund Based was Rs 30.75 Crores. The remaining was Non-fund based limit consisting of FLC / LOC / BG. For the non-fund based facilities, the bank has taken total margin of 15% out of which 10% in the form of TOR & 5% in the form of exclusive security by creation of equitable mortgage of the property situated at BKC, Mumbai. 4. Same as our reply in point No-1. The exposure of other Consortium members are not in our books/data not available with us.

5. All eligible TDRs / FDR in favour of Bank of India which were part of Cash Margin have already been appropriated / adjusted. The same are contained in the attachment under the column "Margin Appropriated".

6. Same as point no-5.

7. All funding has been done as part of Consortium funding and None on standalone basis. For the non-fund based facilities, the bank has taken total margin of 15% out of which 10% in the form of TDR & 5% in the form of exclusive security by creation of equitable mortgage of the property situated at BKC, Mumbai.

(Emphasis supplied)

Since the FLC/LC/BG were admittedly no longer alive, there was no continuing obligation requiring the margin held in the form of security to be held in trust. Since the FLC/LC/BG had devolved before the CIRP date and the equitable mortgage had not been enforced prior to the CIRP commencement date, the subject property remained an asset of the Corporate Debtor. The margin money in the form of equitable mortgage cannot be said to have remained with the bank since the security interest was not enforced. The unenforced equitable mortgage could not have been treated as margin any longer. The **Supriyo Kumar judgment supra** does not come to the rescue of the Respondent No.1 as the FLC/LC/BGs were not alive in the present case during the CIRP period. This

ratio does not apply to an unenforced mortgage which remains in the ownership and control of the Corporate Debtor.

23. The reliance placed by the Respondent No. 1 on the judgment of the Hon'ble Supreme Court of India in the ***Reserve Bank of India judgment supra*** is also misplaced as that judgment dealt with cash deposits which had been segregated in margin accounts for the specific purpose of honouring letters of credit. On the other hand, the Respondent No.1 in the present case not having enforced the equitable mortgage, the subject property was never segregated and placed under a separate, identifiable fund and instead had remained an asset of the Corporate Debtor all along. In their defence it was pointed out by Respondent No. 1 that they had commenced proceedings before the Additional Chief Judicial Magistrate, Mumbai for appropriating such immovable property towards its margin before commencement of CIRP but this process admittedly could not be completed. Clearly therefore the subject property had never devolved upon Respondent No.1 but remained with the Corporate Debtor as its asset. On the SARFAESI order relied upon by the Respondent No.1, we would only like to observe that it was passed on 09.10.2024 which fell during the moratorium period. The reliance placed by the Respondent No.1 on the judgment of this Tribunal in ***Indian Overseas Bank Vs Consortium of GSEC Ltd. in CA(AT)(Ins) No. 943 of 2024*** also does not also come to their aid because in that case the bank had already utilized the margin money which was in its custody before CIRP commencement and had only adjusted the books entries subsequently.

24. Since the Respondent No.1 had accepted margin in the form of an equitable mortgage, the unenforced mortgage would qualify as security interest

during CIRP. When we look at Section 3(31) of the IBC, the term security interest has been defined to “*mean right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person*”. Since the definition of “security interest” under the IBC covers a mortgage and in the present case the margin has been accepted in form of an equitable mortgage which was not enforced, the benefit of the proviso to the definition of “security interest” which excludes a performance guarantee becomes inapplicable in the facts of this case. It follows therefrom that since the mortgage has not been enforced, with CIRP having commenced and the provisions of moratorium having come into play, the mortgage cannot be enforced as Section 14(1)(c) prohibits “*any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002*”. The Appellant has therefore rightly contended that the Adjudicating Authority has committed a gross infirmity in allowing an action which is otherwise prohibited under Section 14(1)(c) to be carried out by accepting the misplaced plea of the Respondent No.1 that the equitable mortgage was clothed with the character of margin which was held in trust by the Corporate Debtor.

25. From the conspectus of facts of the present case, it appears that the Respondent No.1 on realising that the CoC had by majority decided on *inter se*

distribution in favour of creditors not on the basis of security interest but on pro-rata distribution of proceeds to the creditors on admitted claim basis and that the same would hurt their interests that the Respondent No.1 has posited the subject property held in the form of exclusive security by creation of equitable mortgage as “margin” and not a “security interest” so as to be able to enforce the same at this stage. When we see the e-mail reproduced at para 16 above, it has been admitted by the Respondent No.1 that the margin available in the subject property could not be appropriated due to the nature of the margin. Such enforcement of security interest is permissible under Section 52 of the IBC during the liquidation period but is precluded during insolvency proceedings. The Adjudicating Authority by having allowed the same during the CIRP period by excluding the subject property from the asset pool of the Corporate Debtor has therefore passed the impugned order which cannot be sustained.

26. The CoC, in terms of Section 30(4) of the IBC, enjoys the jurisdiction to decide on whether to distribute the plan proceeds amongst the creditors as per their vote share or in accordance with their security interest. Once such a decision is taken by the CoC after receiving the requisite vote share, this decision of the CoC is an exercise of its commercial wisdom and hence becomes final and binding on all and any dissenting financial creditors at best is entitled for minimum of the liquidation value. Hence, when the CoC in the present facts of the case has already decided on *inter se* distribution of plan proceeds amongst the creditors on the basis of admitted claim ratio, the Adjudicating Authority has limited jurisdiction to interfere with the commercial wisdom of the CoC. In such

a case when there is no breach of Section 30(2) of the IBC, the Adjudicating Authority could not have proceeded with allowing enforcement of security interest in the subject property by treating it as a margin since such enforcement of security interest can only be permissible during liquidation under Section 52 of the IBC.

27. For the forgoing reasons, we allow the appeal. The impugned order passed by the Adjudicating Authority excluding the value of 5% margin money from the assets of the Corporate Debtor for devolution upon the Respondent No.1 is set aside. The distribution of payments to the secured creditors, assenting or dissenting, shall be made pro-rata on their admitted claims, in terms of the CoC's decision.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Place: New Delhi

Date: 29.10.2025

Abdul