

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

207. IA/2940/2024 IA/651/2024 IA/5570/2023 IA/5571/2023 C.P. (IB)/295(MB)2022
IN THE MATTER OF

Kotak Mahindra Bank Limited
Vs
Hybro Foods Private Limited
U/s 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 07.10.2025

CORAM:
SH. MOHAN PRASAD TIWARI
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant in IA/2940/2024 &
IA/651/2024:-

Adv. Ayush J Rajani a/w. Adv. Khushboo
Shah Rajani a/w Adv. Mitali Bhatt i/b AKR
Legal (VC)

IA 5570 of 2023 & IA 5571 of 2023:
For the Applicant in

Adv. Nikhil Rajani (PH)

For the Respondent in IA 2940/2024:
For the Respondent in IA/5570/2023
& IA/5571/2023

Adv Deepak Saxena (R2)

For the Respondent in IA 651/2024:-

Adv. Sarosh Damania (R1)
Adv. Nirav Shah (R1) MSEDCL (VC)

ORDER

IA 2940/2024: - This is the IA filed by the RP in respect of the releasing of the FDs kept with the bank for issue of bank guarantees. In all there are 4 bank guarantees and at the time of filing of this IA, 2 of the guarantees were still running and their dates have not expired. However as of now, the bank guarantees have all expired. Learned counsel for the respondent seeks time to seek instruction in view the period of bank guarantees have expired whether, they have received any claim from any person in respect of these bank guarantees by his client. He accordingly wishes to place such facts on record by way of additional affidavit. Let the same be done within a period of two weeks. List for further consideration on **27.11.2025**.

IA 651/2024: - This IA has been filed by the RP seeking following prayers.

“1. Allow the present IA of 2023 under provision of Section 60(5) read with Section 14 of the Code;

2. Pass necessary order directing the Respondent to refund the Security Deposit of Rs. 13,23,102/- deposited by Hybro Foods Private Limited, immediately, into the designated account of the Corporate Debtor;

3. Issue such other necessary orders as may be deemed necessary in the matter.”

2. The main prayer relates to seeking directions to the Respondent to refund the security deposit of Rs. 13,23,102/- deposited by the Corporate Debtor into the designated account of the corporate debtor. Learned counsel for the applicant submits that the corporate debtor was admitted into CIRP on 03.03.2023 and thereafter into Liquidation on 27.03.2025.
3. Learned counsel submits that the Corporate Debtor had deposited an amount of Rs. 13,23,102/- for which they were in correspondence with the electricity department for refund. However, during the period of moratorium such security deposit has been adjusted against the outstanding energy bill and therefore, the same is in violation of the Moratorium and accordingly, the respondent should be directed to refund the said amount of security deposit into the designated account of the Corporate Debtor.
4. In support learned counsel for the applicant has placed reliance on the judgment of the Hon'ble NCLAT in the case of Superintending Engineer Vs. Sivrama Prasad Bhamidi in ***Company Appeal (AT) (CH)(INS.) No. 104/2023 dated 02.08.2023***. Learned counsel has taken us to relevant portion more specifically to para 6 and 7 and has submitted that the facts of the present case are identical and therefore, the directions should be given to the electricity board to refund the said amount of security deposit to the designated account of the corporate debtor.
5. Per contra learned counsel for the Respondent submits that on 06.12.2022 the respondent had placed energy bill of Rs. 25,82,060/- on the Corporate Debtor for electricity consumed by the Respondent for the month of November 2022. Such energy bill was not paid by the Corporate Debtor and resultantly the respondent after complying with the due process of law temporarily disconnected the electricity supply to the Corporate Debtor on 30.12.2022. It is further submitted that on 15.02.2023 the respondent permanently disconnected the electricity connection at the premises of the Corporate Debtor and on 06.09.2023, the respondent issued final bill after adjusting the

amount of security deposit to the Corporate Debtor. It is contended that although the adjustment of security deposit became due at the time when the Corporate Debtor failed to make payment of the electricity bill i.e., in the month of December 2022, however, the same was effected in the energy bill dated 06.09.2023, and therefore, the adjustment made by the Respondent is appropriate and in accordance with regulation 13.8 of the Maharashtra Electricity Regulatory Commission (Supply Code) Regulations 2021. Learned counsel further submits that Maharashtra State Electricity Distribution company Limited is a government entity and is governed by its Rule and Electricity Act 2002 and further that the adjustment has been strictly done in accordance with Regulation 13.8 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code) Regulations 2021.

6. We have considered the facts of the case and note that in this case CIRP was initiated vide order dated 03.03.2023. It is further undisputed that the amount of security deposit which is at Rs. 13,23,102/- has finally been adjusted against the Electricity Bill on 06.09.2023. It is undisputed that as of 06.09.2023, Moratorium under Section 14 of the IBC was in force and the security deposit to the extent it was with the respondent was the asset of the corporate debtor and could not have been appropriated/adjusted by them. As regards the application of Regulation 13.8 of the Maharashtra Electricity Regulatory Commission (Supply Code Regulations, 2021) are concerned, it is stated that as per the provision of Section 238 of IBC, any provision or any other law for time being in force which are in consistent with the provisions of IBC, then the provisions of IBC would prevail.
7. Having considered the facts and circumstances of the case and noting that the adjustment of security deposit of Rs. 13,23,102/- has been done by the Respondent during the period of moratorium and more specifically on 06.09.2023 and such adjustment being in violation of the Moratorium as provided under Section 14 of the IBC, it is only imperative that the Respondents are directed to refund the amount of Security deposit to the designated account of the Corporate Debtor.

8. Accordingly, it is deemed appropriate to direct the Respondent to refund this amount of security deposit of Rs. 13,23,102/- to the designated account of the corporate debtor within one month. The IA is **disposed of in above terms**.

IA 5570/2023: - This IA has been filed by the RP. In the order dated 13.08.2024 certain details/documents have been noted and there is a mention of the CoC stating that RP shall file a formal police complaint regarding the disputes. Further, directions were given to the RP to place on record the copy of the police complaint and if any decision has been taken to get the assets insured. Learned counsel for the Respondent had also undertaken to place on record in a tabulated manner all the information provided to the RP with respect of the assets of the Corporate Debtor.

With dismay we note that despite passage of more than one year no compliance has come either from the RP or from the counsel of the Respondent. They are however, directed to make the compliance of the said observations/directions in the order dated 13.08.2024 within next two weeks.

Learned counsel for the Applicant wishes to place on record certain more facts in respect of the properties which should have been dealt with by the suspended directors subsequent to the imposition of moratorium. Let the same be done within two weeks after serving a copy to the opposite side.

Learned counsel for the Respondent in respect of the letter dated 23.03.2023, written by the CD to the IRP wherein details of the other sold scrap, sold scrap motor truck etc. has been given, submits that all these transactions are prior to the date of CIRP and are duly recorded in the books of accounts/bank accounts of the corporate debtor. On directions, he agrees to place on record the concerned bank statement of the corporate debtor duly highlighting the said transactions by way of additional affidavit. Let the same be done within two weeks. List this IA accordingly for further consideration on **27.11.2025**.

IA 5571/2023: -This is the IA filed by the RP under Section 19(2) of the IBC seeking the details/document/cooperation from the suspended directors. List this IA also for further consideration on **27.11.2025**.

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)
//Anmol//

Sd/-
MOHAN PRASAD TIWARI
Member (Judicial)