



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

IA No.2921 of 2025

Under Section 60(5) of Insolvency and Bankruptcy
Code, 2016 and Rule 11 of National Company Law
Tribunal ("NCLT") Rules, 2016

BANK OF INDIA

...Applicant

V/s

AMIT CHANDRAKANT SHAH.

...Respondent

In the matter of

C.P.(IB) NO. 973 (MB) OF 2020

BANK OF INDIA

...Petitioner

V/s

FROST INTERNATIONAL LIMITED

...Respondent

Order delivered on: 13.08.2025

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant : Adv. Rohit Gupta a/w Adv. Indrajeet
Deshmukh Ayush Rajani.



For the Respondent : Adv. Jash Shah a/w Adv. Prateek Kumar, Adv. Rahul a/w Adv. Dhruvad Vaghani and Adv. Kamakshi.

ORDER

1. This Application IA 2921/2025 was filed by Bank of India ("Applicant"), one of Financial Creditor, under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code") in the Corporate Insolvency Resolution Process in case of Frost International Limited ("Corporate Debtor"), seeking following reliefs:

- (a) Stay the Corporate Insolvency Resolution Process against the Corporate Debtor;*
- (b) Stay on approval of Resolution Plan in an event that the Resolution Plan is approved;*
- (c) to set aside and quash the 41st meeting CoC of the Corporate Debtor which interalia approved the distribution of payments to the secured creditors, assenting or dissenting shall be based on their admitted claim ratio;*
- (d) pending hearing and final disposal of the present Application, restrain the Resolution Professional from distributing the payments to any of the members of CoC;*
- (e) any further and other relief that the Hon'ble Tribunal deems fit*

2. The Applicant i.e., Bank of India is a Secured Financial Creditor of the Frost International Limited ("Corporate Debtor"), and a member of the Committee of Creditors ("CoC") of the Corporate Debtor with 12.97% voting share in the same. Mr. Amit Chandrakant Shah, the Insolvency Professional appointed as the Resolution Professional of the Corporate Debtor, is Respondent.



3. The Applicant has challenged the distribution pattern on the basis of admitted claim value as adopted by the Resolution Professional with respect to receiving of proceeds from the prospective Resolution Plan whilst ignoring the priority of Applicant's exclusive charge over the assets in favour of the Applicant i.e., Bank of India as stipulated under S. 30 (2) (b) of Insolvency & Bankruptcy Code, 2016 held as margin against the letter of credit facility provided to the Corporate Debtor.
4. The Applicant herein had filed Company Petition under Section 7 of Insolvency and Bankruptcy Code, 2016 which came to be allowed vide an order dated 09th February 2023, and accordingly Corporate Insolvency Resolution Process for the Corporate Debtor came to be initiated. Mr. Amit Chandrakant Shah, the Respondent herein, was appointed as the Interim Resolution Professional by this Tribunal, who subsequently also came to be appointed as the Resolution Professional of the Corporate Debtor.
5. On 23rd February 2023, Applicant filed its claim with the Resolution Professional for a sum of Rs. 10,128,232,762/-, however the Resolution Professional admitted a claim of Rs. 10,124,915,522/- and an amount of Rs. 33,17,240/- was put under verification. The Applicant had provided the details of securities held by it in form C detailing the securities held as consortium member and securities exclusively held filed by the Applicant. The issue under consideration has arisen from treatment of such exclusive charge in form of margin money held by the Applicant over one of the property of the Corporate Debtor against Non fund based credit facilities extended by it to the Corporate Debtor as distribution amongst secured creditors on basis of admitted claim negates its right to appropriate margin money against the devolved non fund based facility.



6. It is case of the Applicant that it holds exclusive charge over one property situated at Office Unit No. 709, 7th Floor, C Wing bldg., One-BKC, Bandra E . Distt. Mumbai- 400051 in the name of Frost International Ltd. as 5% margin for FLC/LOC/BG amounting to Rs. 700 crores in terms of sanction letter dated 5.9.2017 in addition to 10% margin against these non fund based facilities held as FDRs, which stands adjusted. It is further submitted by the applicant that while 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.
7. The Applicant has also submitted that, by virtue of the distribution, which is now approved by the committee of creditors, the exclusive security interest created in favour of the Applicant herein, is sought to be defeated, which is clearly contrary to the law laid down by the Hon'ble Apex Court in the matter of *Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta ('Essar')* and followed in the matter of *Jaypee Kensington Boulevard Apartments and Welfare Association & Ors versus NBCC (India) Limited & Ors ('Jaypee')*. It is also contended that, in fact, *India Resurgence ARC (P) Ltd. versus Amit Metaliks Limited (2021) 19 SCC 672 ('Amit Metaliks')*, on which reliance has been placed by the members of the CoC and the RP, has been categorically referred by the Apex Court to the larger bench in the matter of *DBS Bank Limited Singapore versus Ruchi Soya Industries Limited & Anr. ('DBS')* and the Hon'ble Apex Court, in no uncertain terms, in DBS, has held that such an interpretation in Amit Metaliks is contrary to the law laid down in the matter of Essar as well as Jaypee Kensington. The Applicant has also relied upon the decision in case of *Punjab National*



Bank versus Supriyo Kumar Choudhary Resolution Professional (2022 SCC Online NCLAT 3924) to contend that the margin money is not included as a 'Security' and is not an asset of the 'Corporate Debtor.

8. It is case of the Respondent that the issue regarding margin money being raised by the Applicant herein, was never highlighted by the Applicant in its claim form, and the One BKC Property, which the Applicant now characterizes as margin money, was neither claimed nor adjusted in their claim form. The Applicant never disclosed or raised this issue of margin money during the issuance of Form G (on three separate occasions), the issuances of the Information Memorandum (on three occasions), the Expression of Interest ("EOI") process (cluster-wise twice and once for company as a whole), during the challenge process (three times) or even during the voting process. Accordingly, this asset had already been included in the EOI and was duly considered by all six resolution applicants while formulating and submitting their respective resolution plans, thereby forming an integral part of the overall valuation and commercial structuring of such plans. Instead, the Applicant for the first time submitted on 5.6.2025 & 9.6.2025 a Sanction Letter dated September 5, 2017, in which the 5% margin money by mortgage of the One BKC Property of the Corporate Debtor was shown. The Respondent has relied upon the Hon'ble NCLAT's decision dated 28.5.2021 in the matter of *Bank of India v. Bhuban Madan, RP of Ferro Alloys Corporation Ltd.*, wherein it was held that appropriation of margin money after commencement of CIRP amounts to a violation of the moratorium.
9. Heard the Counsel and perused the material on record.
10. In the present case, the issue for consideration before us arises from the CoC's decision dated 11.6.2025 resolving to distribute the



amounts amongst the secured creditors on the basis of admitted claim ratio. This legal proposition is in consonance with the decision of Hon'ble Supreme Court in case of Amit Metaliks (Supra) and has been held to be binding precedent by Hon'ble NCLAT in case of State Bank of India v. IDBI Bank Ltd. and Anr., [\(2025\) ibclaw.in 81 NCLAT](#) holding as follows :

“13. Insofar as submissions of the Counsel for the Appellant that correctness of the Judgment of Hon'ble Supreme Court in ‘Amit Metaliks Limited’ (Supra) has already been referred to the larger bench by Judgment of the Hon'ble Supreme Court in ‘DBS Bank Ltd. Singapore’ (Supra), this Tribunal in ‘Beacon Trusteeship Ltd.’, (Supra) had occasion to notice Judgment of the Hon'ble Supreme Court in ‘DBS Bank Ltd. Singapore’ (Supra) where reference was made to the Judgment of the Hon'ble Supreme Court in ‘Amit Metaliks Limited’ (Supra). This Tribunal in Paragraph 54 held that law declared by the Hon'ble Supreme Court in ‘Amit Metaliks Limited’ (Supra) can very well relied until a different view is expressed by the Hon'ble Supreme Court in the reference made in ‘DBS Bank Ltd. Singapore’ (Supra). Paragraph 54 of the Judgment of this Tribunal is as follows:

“54. Judgment of the Hon'ble Supreme Court in ‘Vistara ITCL (India) Ltd.’ (Supra) does not come to help of the Appellant in the present case. It is relevant to notice that Hon'ble Supreme Court in ‘DBS Bank Ltd. Singapore v. Ruchi Soya Industries Ltd.’ 2024 SCC OnLine SC 3, made a reference to the earlier Judgment of the Hon'ble Supreme Court in ‘India Resurgence ARC Pvt. Ltd.’ (Supra), which reference is pending



consideration before the Hon'ble Supreme Court. Law declared by Hon'ble Supreme Court in 'India Resurgence ARC Pvt. Ltd.' (Supra) can very well be relied until a different view is expressed by the Hon'ble Supreme Court in the reference pending before it."

11. Accordingly, the issue of distribution of amounts amongst Secured Creditors has to take place on basis of admitted claims ratio till a different view is expressed by the Hon'ble Supreme Court in the reference made in 'DBS Bank Ltd. Singapore' (Supra). Realising this legal proposition laid down by Hon'ble NCLAT, the Applicant has asserted its claim in relation to margin money component distinctly. It is pertinent to note that the Applicant had filed its claim on 23.2.2023 and the decision in case of DBS Bank Ltd. Singapore' (Supra) was delivered on 3.1.2024, prior to which the law laid down by Hon'ble Supreme Court in case of Amit Metaliks (Supra) was a binding legal precedent holding that the distribution amongst the Secured Creditors has to be made in accordance with the admitted claims ratio.
12. Having said so, it is pertinent to answer the question raised by the Applicant in its pleadings and that question indirectly affects the quantum to which the Applicant shall be entitled to in terms of the distribution manner, agreed by the CoC by majority and to which the Applicant has not voted. The Applicant has claimed that it has exclusive security to the extent of 5% of Non-fund Based Limits of Rs. 700 Crores, extended to the Corporate Debtor as margin money, as those limits were extended to the Corporate Debtor against 15% margin, of which 10% was received in form of FDRs and balance 5% was received in form of such exclusive security interest in a property. Admittedly, the Applicant has taken this position belatedly and had claimed earlier amount inclusive of such 5% margin as debt due from the Corporate Debtor in its claim form C and its claim was admitted



as such, however it had stated in the annexure attached to such form that it holds exclusive charge over Unit No.709,7th at C66-One BKC, Plot No.C-66 CTS No.4207 Block G, Bandra Kurla Complex opposite Bank of Baroda Near MCA Ground, Bandra (East) Mumbai. In view of this, it is relevant to refer to the relevant minutes of the meetings and the correspondences between the parties in this relation.

13.In the 41st meeting of CoC held on 11.6.2025, the distribution between the secured lenders was agreed by a majority vote of 85.69%. The relevant extract of said minutes is reproduced here as under :

“The Chairman apprised that subsequent to the yesterday's meeting, he circulated the record note of the said meeting to the CoC members. He further apprised that it was decided the day before to adjourn this agenda item and discuss and decide on the same today. The Chairman apprised that it was decided that BOB and BOI would provide breakup of individual lending and consortium lending. He apprised that he has received said detail from BOB, however BOI has not provided the same. The Chairman apprised that other action item was to run through the assenting and dissenting secured creditor's distribution working. He apprised that he has prepared the said working after taking advice from DSK Legal based on the legal position and presented the same before CoC members.

BOB highlighted that BOI Singapore would not be part of dissenting creditor being unsecured creditor and in response to the same the chairman responded that he will check and modify the same, as required.

.....

After the due discussions and deliberations, the Chairman asked each CoC members, one by one, whether distribution should happen to the Secured Creditors (assenting and dissenting) based on the admitted claim ratio or security interest and whether they are in favour of conducting physical voting or e-voting. The responses of each CoC member are as follows:

Sr. No.	CoC member	Response
1	BOI	Would require time to speak with controlling authority and revert back.
2	UCO	To opt for Physical voting - Yes. (On majority basis) Voted for - distribution based on admitted claim ratio.
3	CBI	To opt for Physical voting - Yes. Voted for - distribution based on admitted claim ratio.
4	PNB	To opt for Physical voting - Yes. (They can opt for e-voting also if all CoC members agree) Voted for - distribution based on admitted claim ratio.
5	Canara	To opt for Physical voting - Yes. Voted for - distribution based on admitted claim ratio.
6	BOB	To opt for Physical voting - Yes. Voted for - distribution based on admitted claim ratio.
7	UBI	To opt for Physical voting - Yes. Voted for - distribution based on admitted claim ratio.
8	IB	To opt for Physical voting - Yes. Voted for - distribution based on admitted claim ratio.
9	IOB	To opt for Physical voting - Yes. Voted for - distribution based on admitted claim ratio.
10	BOI Singapore	They were not present in the meeting, however they always go ahead with the view of BOI, India.

BOB stated that all CoC members except BOI and BOI Singapore voted in favour of the distribution based on admitted claim ratio. The chairman declared that with the 85.69% of majority votes, it was

resolved to distribute the payments to secured creditors, assenting and dissenting both, based on their admitted claim ratio. He further apprised that this decision is taken based on physical voting and no e-voting would be conducted.

.....
The Chairman apprised that as the distribution criteria is now finalized, we should open voting line for resolutions of 40th CoC meeting from day after tomorrow, i.e. from June 13, 2025 and keep it open for next 7 days and if any CoC member would request for extension, he would extend the same for 24 hours till resolutions are voted upon. There were no inputs / suggestions from anyone and the same was decided unanimously.

UCO asked the Chairman to brief again the decision taken by the CoC. The chairman apprised that the resolution to distribute the payments to secured creditors based on their admitted claim ratio has been passed with majority of 85.69% of votes in favour and BOI would come back on the decision by day after and their vote will be considered accordingly.”

14. On the next day i.e. June 12, 2025, the Applicant BOI sent an email to the Respondent, annexing thereto sanction letter dated 5.9.2017, and stating that –

“We are writing to formally object to your proposed payout calculations as they do not comply with Section 30(4) of the IBC Code.

As previously communicated, our bank holds an exclusive charge on specific assets of the corporate debtor valued at Rs. 29.47 cr, in addition to our pari passu charge on other assets. Based on our calculations (attached), our total share of the liquidation value amounts to Rs. 40.79 crores, comprising:



1 Rs. 29.47 Cr (Exclusive charge)

2 Rs. 11.32 Cr (Pari passu share)

The distribution of both assenting (AFCs) and dissenting creditors (DFCs) has been made based on voting share, which appears a deliberate misrepresentation of IBC. The distribution to DFC is based on security interest whereas distribution to AFCs is based on voting share.

Given these discrepancies, we request that you:

- 1 Revise the distribution pattern to accurately reflect our exclusive security interest and pari passu security interest*
- 2. Recalculate share of AFCs and DFCs based on a) Distribution to AFCs based on voting share b) Distribution to DFCs based on security interest.*
- 3. Suspend the voting process until this revision is completed*
- 4. Convene a new CoC meeting to discuss the liquidation value distribution among all CoC members (both assenting and dissenting) in compliance with Section 30(4) of IBC Code, 2016.”*

15. On 17.6.2025, the Applicant BOI again wrote to Respondent RP asking him to recalculate distribution pattern and hold the voting process giving following information –

- 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 appx valuation of Immoveable property exclusively taken by BOI.

16. The Respondent Resolution Professional wrote back on 18.6.2025 that –

“We refer to your trail emails dated June 17, 2025, and June 18, 2025. At the outset, we would like to inform you that as previously intimated as well, we have taken on record the exclusive security claimed by you, however, you have not provided the break-up of your claim amount into consortium lending and individual lending. We refer to our emails dated June 13, 2025, and June 16, 2025, wherein we have already provided a detailed response and clarifications to the same queries.

We once again emphasize that the matter of distribution pattern has already been extensively discussed in the 41st CoC meeting held on June 10, 2025 and 41st Adjourned CoC meeting held on June 11, 2025 and the CoC by a vote of 85.69% majority in the meeting, after taking into consideration all the points raised, had decided to distribute the payments to secured creditors, assenting and dissenting, based on their admitted claim ratio. All the CoC members except you and Bank of India, Singapore have voted in favour of the resolution passed and therefore, the distribution method has been approved by the requisite majority as required under IBC and the CIRP Regulations.

As this matter has already been discussed and voted in the CoC meeting, therefore, the process will continue to run as is and the voting lines which have been re-opened from June 13, 2025, will continue to remain open for the CoC members to cast their votes as decided by the



CoC members during 41st Adjourned CoC meeting. Further, please note that we have limited time remaining to complete the CIRP and therefore any further delays including halting the voting may not be considered favourably by the NCLT, at this juncture. We request you to please cast your valuable vote for the approval of the resolution plan for the successful resolution of the Corporate Debtor at the earliest as the voting lines will be closed on June 19, 2025.”

17. There is no dispute that the Applicant is holding exclusive charge over one property as Margin Money to the extent of 5% of credit facility towards the credit facilities provided in form of FLC/LOC/BG, though the details of such margin money came to be notified only at a later stage and the applicant has claimed whole of devolved non-fund facilities as due from Corporate Debtor without reducing the value of margin money held in form of such charge over an immoveable property. Be as it may be, the Resolution Professional is obligated verify the claim of creditors on the basis of documents produced before him and as available with the Corporate Debtor. It can not be denied that the details of such exclusive charge must have been available with the Corporate Debtor and duly recorded in its audited financial statements as well. Nonetheless, such details became available to the Resolution Professional for considering the claim of the Applicant in light of new material placed on record by the applicant. There is no provision under the Code restraining the Resolution Professional from doing so.

18. It is pertinent to refer to the decision of **Hon’ble NCLAT in case of Punjab National Bank versus Supriyo Kumar Choudhary Resolution Professional (2022) ibclaw.in 731 NCLAT** wherein it was held that



“27.....the Banks having appropriated this money during the period of Moratorium is justified as we hold that the amount is not an asset of the ‘Corporate Debtor’. Therefore, a conjoint reading of Section 3(31) and Section 14 of the Code makes it abundantly clear that margin money is not included as a ‘Security’ and is not an asset of the ‘Corporate Debtor.’” The Hon’ble NCLAT in case of *Rajendra Prasad Tak (Liquidator) v. Mahanadi Coalfield Ltd. and Anr.* (2025) *ibclaw.in* 551 NCLAT took note of its earlier decision in case of *Indian Overseas Bank Vs. Arvind Kumar* (2020) *ibclaw.in* 285 NCLAT and in case of *Punjab National Bank versus Supriyo Kumar Choudhary Resolution Professional* (2022) *ibclaw.in* 731 NCLAT and held that “21. Hence, we endorse the view that the margin money is a contribution only, towards securing the Bank Guarantee, that it remains with the Bank, as long as the Bank Guarantee is alive, that if the Bank Guarantee expires without being invoked, the margin money reverses back to the Borrower and in case, the Bank Guarantee is invoked by the beneficiary, the margin money goes towards the payment of the amount guaranteed by the said Bank Guarantee to the beneficiary and nothing remains with the Financial Institution, which can be reversed to the Corporate Debtor.” These decisions unequivocally lay down legal proposition that the margin money goes towards the payment of amount guaranteed and is held in the name of Corporate Debtor in trust for the issuing financial institution, hence, such margin money does not form part of assets of the Corporate Debtor. These decisions do not distinguish on the basis of form in which margin money is held, hence, it is immaterial whether such margin money is held in form of liquid instruments or in form an immoveable property. Accordingly, we hold that the an amount equivalent to 5% of the FLC/LOC/BG devolved upon the Applicant is required to be excluded from the total assets of the Corporate



Debtor subject to maximum of the fair value of property situated at Office unit no 709, 7th Floor, C Wing, Building , One BKC, Bandra Kurla Complex, Mumbai 400051 determined by the Registered Valuer engaged by the Respondent Resolution Professional and the said amount shall belong to the Applicant.

19.This Tribunal had asked the Applicant to furnish the details of the total FLC/LOC/BG devolved upon it. It has submitted vide additional affidavit dated 17.7.2025 that the total value of devolved FLC is Rs. 578,39,24,065.76 and total value of devolved BG is Rs. 50,00,000/-. Accordingly, the value of margin money shall be 5% of these amounts and the rest of margin money shall stand released in favor of Corporate Debtor. Needless to say, the Resolution Professional shall exclude such value from the total admitted claim of the Applicant.

20.Accordingly, IA 2921 of 2025 is allowed in terms of aforesaid directions and disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)