IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal

I.A. (I.B.) No. 493/KB/ 2025
IN
C.P. (I.B.) No. 339/ KB/ 2022

IN THE MATTER OF:
Canara Bank (formerly known as Syndicate Bank)

… … … Financial Creditor

Versus

BBT Elevated Road Private Limited

… … … Corporate Debtor

AND

IN THE MATTER OF:
HDFC Bank Limited

… … … Applicant

Versus

Resolution Professional (Mr. Sachin Gopal Jathar),
BBT Elevated Road Private Limited & Anr.

… … … Respondents

Date of Pronouncement: 17th day of March, 2026

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)
CMDE SIDDHARTH MISHRA, MEMBER (TECHNICAL)

APPEARANCE:
Mr. Jishnu Chowdhury, Sr. Adv.] For the HDFC Bank
Mr. Deepanjan Dutta Roy, Adv. in IA(I.B.C)/493(KB)2025
Ms. Sanjana Jha, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial):

1. The Court congregated through hybrid mode.

2. Heard Ld. Counsels for the parties.

3. The present application (I.A.) (I.B.) No. 493/ KB/2025 has been filed on 20th March, 2025 by the applicant Bank under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC") read with Rule 11 of the National Company Law Tribunal Rules, 2016, *inter alia,* seeking directions that the Applicant is the financial beneficiary of Rs. 105,22,41,974/- which sum or property equivalent thereof of the Corporate Debtor by utilizing the said sum, is lying with the Corporate Debtor and that this sum of Rs. 105,22,41,974/- which is held in constructive trust for the benefit of the Applicant should be returned to the Applicant.

4. **Submissions of the Applicant**

i. The Corporate Debtor was a special purpose vehicle formed and incorporated on 19th February, 2014 for the development, design, financing, procurement, engineering, construction, operation and maintenance of the elevated road between Jinzira Bazaar and Batanagar of the project highway on Budge Budge Trunk Road, Kolkata.

ii. RDPL had availed certain loans from the Applicant since 2010 amounting to a sum of Rs. 827.63 Crores (approximately) for financing the development of the Calcutta Riverside project at 1, Bata Road, Kolkata – 700 140.

iii. At the time of seeking financial assistance by RDPL from HDFC, RDPL had stated in its loan application that the purpose of the loan is for Development of Calcutta Riverside and Development of Infrastructure. The sanction letter dated

23rd September, 2016 records the purpose for sanction of loan of Rs. 150 crores for *"Development of Calcutta Riverside and Development of Infrastructure"* (page 40)

iv. The aforementioned elevated road which was to be constructed by the subsidiary of RDPL, being the Corporate Debtor herein, for the purpose of connecting Budge Budge Trunk Road to the Calcutta Riverside Project. The sanction letter dated 28th June, 2019 issued by HDFC also clarifies that the purpose of the loan to RDPL was for *"General business purpose and working capital requirements of the Group's Projects."*

v. The Corporate Debtor, a subsidiary of RDPL holding 90% of its shareholding and sharing common directors – Mr. Sumit Dabriwala and Mr. Nandu Kishinchand Belani – during the period 2015 to 2019, functioned as a thinly capitalized special purpose vehicle. It was heavily reliant on funding from its holding company, RDPL, which in turn had received funds from HDFC Limited amounting to Rs. 827.63 Crores.

vi. Letter dated 22nd November 2021 at Page 235 of the application, as issued by the BBT Elevated Road Private Limited (Corporate Debtor) and the Riverbank Developers Private Limited was also placed to show that it had been undertaken by the two parties that the after execution of any settlement agreement with the Government of West Bengal, any surplus amount lying with the Corporate Debtor would be assigned back to HDFC Bank Limited.

vii. The letter of undertaking dated 22nd November, 2021 executed by the Corporate Debtor and RDPL provides unequivocal and conclusive proof of transfer of funds by the common director from RDPL to the Corporate Debtor.

viii. The Corporate Debtor was a subsidiary of RDPL and a closely connected entity. This is not in dispute. In fact, the directors of RDPL and of the Corporate Debtor and their dates of appointment would amply make the same clear and evident:-

Director name	**Date of appointment in RDPL**	**Date of appointment in BBT**
Sumit Dabriwala	Managing Director since 25th October, 2007	Director since 19th February. 2014
Nandu Kishinchand Belani	Director since 25th October, 2007	Director since 28th March, 2014

ix. It is therefore evident that large funds in excess of Rs. 105 Crores were transferred from the Applicant to the Corporate Debtor through RDPL. These are sums which are held in trust by the Corporate Debtor. The Corporate Debtor is a constructive trustee holding on to these funds for a particular Project and undertaking that if that Project does not fructify, the said sums would be returned to the Applicant. The letter of undertaking and the other documents referred to above makes this position amply clear and evident.

x. In the said circumstances, the said sums which are in excess of Rs. 105 Crores are not funds of the Corporate Debtor. These are funds belonging to the Applicant which the Corporate Debtor was holding in trust.

5. <u>Findings:</u>

i. The Corporate Debtor BBT Elevated Road Private Limited was admitted in CIRP on 19.12.2023. Riverbank Developers Private Limited which had availed loans from the Applicant

HDFC Bank Limited allegedly amounting to Rs. 827.64 crores for financing the development of Calcutta Riverside Project at Bata Road and for development of infrastructure was the holding company of the corporate debtor BBT Elevated Road Private Limited. It is submitted that both BBT Elevated Road Private Limited and RDPL had executed settlement agreement with the Government of West Bengal with any surplus amount lying with the corporate debtor would be assigned to HDFC Bank Limited. The HDFC Bank Private Limited had disbursed funds and fund were transferred to the Corporate Debtor BBT Elevated Road Private Limited through RDPL to be held in trust by the Corporate Debtor which is set to be Rs. 105,22,41,974/-. Since, the said sum is held in trust by the Corporate Debtor. It cannot be formed the assets of the Corporate Debtor.

ii. Hon'ble Gujarat High court in the case of *Barioda Spg. & Wvg. Mills Co. Ltd. (in Liquidation)* v. *Baroda Spg. & Wvg. Mills Co-operative Credit Society Ltd. And Another (1975) SCC online Guj 22* has held at paragraphs 20, 23 and 24 that that when money is received by a company for a specific purpose and is impressed with a trust, it does not become the company's asset or property, even if the company is in liquidation. The company acts merely as a custodian or trustee, and such funds can be recovered by the beneficiary before any distribution of the company's assets. Money held in trust is therefore required to be excluded from the pool of assets available to creditors in winding-up proceedings.

iii. Hon'ble NCLAT in the *TRAI v. Reliance Telecom Ltd. (2024) SCC Online NCLAT 1264,* had held that the security deposit balance of post-paid subscribers and unspent balance of pre-paid subscribers of the corporate debtor, which were held in trust by the corporate debtor, did not form part of its assets and could not be used for the recovery of the claims of the creditors of the Corporate Debtor under the IBC. These amounts had to be refunded to the subscribers as per the directions of TRAI.

iv. *Moser Baer Karamchari Union v. Union of India & Others (2023) 9 SCC 499* at paragraph 28 that monies payable to the workers under various statutes like The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Payment of Gratuity Act of 197 and several other labour laws are monies actually belonging to the workers and cannot from part of the liquidation estate. These monies belonging to the workers but are held by a trust. For this reason, these monies have to be paid back in full and there cannot be a haircut. The principle behind this judgment is that the corporate debtor is holding funds of workers in constructive trust though the same may not be spelt out clearly. However, the basis is that money of others held by the Company are not to be treated as part of the assets of the Company.

v. In *Goode on Principles of Corporate Insolvency Law: South Asia Edition,* it has been held in Chapter 6, paragraph 40 that assets held by a Company but belonging solely to third parties are not available for the Companies Creditors. This would apply to assets which never belong to the Company, namely assets held by the Company on trust. It has been specifically held that trust property is excluded on 23rd March 2025.

vi. We would also note that Section 18(g) of the Code explains that '*assets'* shall not include the following namely,

a) *"Assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;*

b) *Assets of any Indian or foreign subsidiary of the corporate debtor;*

c) *Such other assets as may be notified by the Central Government in consultation with any financial selector regulator."*

Thus, assets held under trust or under contractual arrangements cannot form part of the assets of the corporate debtor.

6. <u>Order:</u>

a) *In* view of the law laid down as evident from the decisions and statutory provisions *supra*, we hold that the money if held by a trust should not be included as assets of the Corporate Debtor and should be refunded back to the HDFC at the earliest preferably within a period of 4 weeks from uploading of this order. IA is, accordingly, **allowed** and **disposed of**.

7. The Registry is directed to send e-mail copies of orders forthwith to all the parties inclusive of the Counsel.

8. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

Cmde Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 17th day of March, 2026.

s.c.(steno