

S.No.3

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
10.06.2026, At 10.30 AM**

**IA (IBC)/540/2025 in CP (IB) No.294/7/HDB/2017
U/s 7 of IBC**

IN THE MATTER OF:

State Bank of India

...Petitioner

AND

IVRCL Limited

...Respondent

C O R A M:-

**SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

O R D E R

IA (IBC)540/2025

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, COURT-II

I.A (IBC) No. 540 of 2025

IN

C.P. (IB) No. 294/07/HDB/2017

[Under Section 42 of The Insolvency and Bankruptcy Code, 2016]

IN THE MATTER OF M/S. IVRCL LIMITED.

Between:

M/S. PEEYUSH SHARMA

through its Proprietor,
having an office at 107, Aradhana Nagar,
Kotra Sultanabad, Bhopal (Madhya Pradesh) - 462003.

.... Applicant

Versus

LIQUIDATOR OF IVRCL LIMITED,

having its registered office at "Mihir", 8-2-350/5A/24/IB,
Road No. 2, Panchavati Colony,
Banjara Hills, Hyderabad, Telangana - 500034.

.... Respondent

IN THE MATTER OF:

STATE BANK OF INDIA

...Financial Creditor

AND

IVRCL LIMITED

...Corporate Debtor

Date of Order:10.06.2026

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Coram:

Hon'ble Shri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Shri Sanjay Puri, Member (Technical)

Counsels Present

For Applicant : Mr. Manjeet Bucha, PCS.

For Respondent : Ms. Mily Ghoshal, Ld. Counsel.

1. The present application has been filed by M/s. Peeyush Sharma, through its Proprietor (hereinafter referred to as the "Applicant"), against the Liquidator of IVRCL Limited (hereinafter referred to as the "Respondent") under Section 42 of the Insolvency and Bankruptcy Code, 2016, seeking the following reliefs:

- i. To declare the action of the Respondent in treating the Performance Security of Rs 2,58,61,562/- given by the Applicant as part of the liquidation estate of the Corporate Debtor as illegal, arbitrary, and contrary to law
- ii. To direct the Respondent to forthwith refund the aforesaid Performance Security amount of Rs 2,58,61,562/- to the Applicant.

APPLICATION

2. The Applicant submits that the Corporate Debtor, M/s IVRCL Limited, Hyderabad, was awarded a contract dated 18.09.2013 by M.P. Audyogik Kendra Vikas Nigam Ltd. (AKVN), Bhopal, for a contract value of Rs.61,39,32,125/-. As per the terms of the contract, the Corporate Debtor was required to furnish Performance Security and Security Deposit of 5% each, by way of Bank Guarantee, along with an Additional Security Deposit, retainable from running bills. The Corporate Debtor

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sublet the said contract to the Applicant under a Sub-Contract Agreement dated 18.09.2013 on similar terms. The Applicant furnished Counter Security Deposit by way of Bank Guarantee, while the Counter Performance Security amount was agreed to be deducted from interim bills, along with retention towards Additional Security Deposit as per mutual arrangement.

3. Applicant submits that in terms of the contract, 5% of the Security Deposit was refundable upon completion of the work, which was completed on 31.03.2017. Pursuant thereto, the Security Deposit amounting to Rs.3,07,00,000/- in the form of Bank Guarantee was released to the Corporate Debtor by the Principal Employer, and consequently, the corresponding Bank Guarantee of Rs.3,07,00,000/- furnished by the Applicant was released. The additional Security Deposit of 5% retained from the running bills amounting to Rs. 3,49,55,928/- is liable to be released to the Applicant in terms of the order dated 17.12.2020 passed by this Tribunal.
4. Applicant submits that 5% of the Performance Security amounting to Rs. 3,07,00,000/- in the form of Bank Guarantee submitted by the Corporate Debtor to the Principal Employer and retained from the Applicant's interim running bills was refundable upon expiry of the Defect Liability Period after its release by the Principal Employer to the Corporate Debtor. The Principal Employer released the Performance Security Bank Guarantee of Rs. 3,07,00,000/- to the Corporate Debtor on 20.10.2022. Consequently, the amount of Rs. 2,58,61,562/- retained by the Corporate Debtor from the Applicant's interim bills towards Performance Security is liable to be refunded to the Applicant.
5. Applicant submits that the Applicant raised the demand for release of Performance Security of Rs.2,58,61,562/- to the Liquidator on 21.08.2023 in view of the release of Performance Security Bank Guarantee of Rs.3,07,00,000/- by the Principal Employer to the

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Corporate Debtor and issued reminders on 19.09.2023 and 04.10.2023. The Liquidator vide letter dated 05.10.2023 stated that the withheld amount of Rs.2,58,61,562/- is payable to the Applicant as per the admitted claims and shall be paid only in accordance with Section 53 of the IBC, 2016.

6. Applicant submits that the letter dated 15.11.2021 of the Liquidator shows the breakup of the admitted amount of Rs.6,22,60,498/- and outlined the outstanding payments of the Applicant as per the ledger in Audyogik Kendra Vikas Nigam Ltd (AKVN) project, including the withheld amount in place of submission of the Performance Bank Guarantee of Rs.2,58,61,562/-. The Liquidator stated that Rs.3,49,55,928/- against the Security Deposit shall be released once received from the Principal Employer. At the same time, the remaining admitted amount in place of submission of the Performance Bank Guarantee shall be treated as per Section 53 of the IBC, 2016.
7. Applicant submits that in reply to the Legal Notice dated 23.11.2013, the Liquidator vide letter dated 13.12.2013 acknowledged that as per the sub-contract agreement dated 18.09.2023, the Applicant was supposed to provide a Bank Guarantee as Performance Security equal to 5% of the work amount but having failed to do so, the Corporate Debtor deducted 5% amount from the running account bills amounting to Rs.2,58,61,562/-. The Liquidator stated that the said sum has been pooled into the assets of the Corporate Debtor and shall only be distributed as per Section 53 of the Code, as any payment outside Section 53 would lead to preference. The Liquidator further asserted that the order dated 17.12.2020 is silent on the treatment of the said sum, which was withheld due to the failure of the Applicant in submitting a Bank Guarantee.
8. Applicant submits that in response, the Applicant vide letter dated 12.03.2024 clarified that as per the main agreement and sub-contract

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agreement, 5% of Performance Security shall be submitted at the time of agreement along with 5% of Security Deposit, and further 5% of Security Deposit shall be retained from interim bills. The Applicant had submitted a Bank Guarantee against 5% Security Deposit amounting to Rs. 3,07,00,000/-, and due to a mutual arrangement, 5% towards Performance Security was recovered from interim bills, making the total 10% retention. The amount retained against Performance Security from interim bills is the money of the Applicant, held in trust by the Corporate Debtor, reflected as payable in the ledgers, and does not form part of the assets of the Corporate Debtor in terms of Section 36 of the IBC, 2016.

9. Applicant submits that the action of the Liquidator in refusing to release the amount of Rs.2,58,61,562/- and treating it under Section 53 of the IBC, 2016, is illegal and contrary to law. If the said amount is not released, grave prejudice will be caused to the Applicant, which cannot be compensated at a later stage. It is therefore just and imperative that this Tribunal directs the Respondent to release Rs.2,58,61,562/- in favour of the Applicant without merging the amount withheld from the interim bills with the assets of the Corporate Debtor and without considering the same under Section 53 of the IBC, 2016.

COUNTER BY RESPONDENT

10. The Respondent submits that the Corporate Debtor was awarded a contract dated 18.09.2013 by M.P Audyogik Kendra Vikas Nigam (Bhopal) Ltd. for civil works valued at Rs. 61,39,32,125/-, with time being the essence of the work. In terms of the contract, the Corporate Debtor was required to furnish a Performance Security Bank Guarantee and Security Deposit Bank Guarantee of Rs. 3,07,00,000/- each, along with an additional security deposit retainable from the running bills till completion of the project. The Corporate Debtor thereafter sublet the work to the Applicant vide Sub Contract Agreement dated 18.09.2013, under which the Applicant was required to furnish Counter Guarantees

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towards Performance Security and Security Deposit in terms of the guarantees furnished by the Corporate Debtor to the Principal Employer.

11. The Respondent submits that the Applicant failed to furnish the requisite Performance Security Deposit and consequently the Corporate Debtor deducted Rs. 2,58,61,562/- from the running bills of the Applicant towards Performance Security Deposit in terms of the Agreement. It is further submitted that deductions towards security deposit and retention money were agreed to be released only upon submission of Counter FDR and completion of the Defect Liability Period. Upon completion of the work, the Principal Employer refunded the Security Deposit, which in turn was released by the Corporate Debtor to the Applicant. However, disputes subsequently arose between the Corporate Debtor and the Principal Employer, pursuant to which Arbitration proceedings claiming Rs. 39,48,76,153/- were initiated before the MP Arbitration Tribunal, Bhopal, on 24.12.2018 and remain pending adjudication.
12. The Respondent further submits that CIRP was initiated against the Corporate Debtor vide order dated 23.02.2018, and Mr. Sutanu Sinha was appointed as Interim Resolution Professional and subsequently confirmed as Resolution Professional. Since no resolution could be achieved, liquidation proceedings were commenced vide order dated 26.07.2019, read with Corrigendum Order dated 31.07.2019, and Mr. Sutanu Sinha became the erstwhile Liquidator. Thereafter, vide order dated 29.10.2025, Mr. Purusottam Behera was appointed as the present Liquidator in place of the erstwhile Liquidator and took charge of the Corporate Debtor on 10.12.2025. Pursuant to public announcement dated 01.08.2019, the Applicant lodged a claim of Rs. 7,40,68,135/-, against which Rs. 6,22,60,498/- was admitted.
13. The Respondent submits that the Applicant thereafter filed IA No. 169 of 2020 seeking admission of the entire claim and IA No. 301 of 2020

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seeking release of Rs. 3,49,55,928/- once released by the Principal Employer. Both Applications were disposed of vide common order dated 17.12.2020, wherein it was observed that the security deposit amount already stood admitted as Operational Debt and would be payable only upon release by M.P AKVN Bhopal or pursuant to orders passed in pending proceedings. The Respondent further submits that although the Principal Employer released the Performance Security deposit of Rs. 3,07,00,000/- to the Corporate Debtor, the Applicant failed to furnish any corresponding Performance Security Deposit under the contract and consequently, Rs. 2,58,61,562/- was deducted from the invoices raised by the Applicant.

14. It is submitted that the Applicant vide letters dated 21.08.2023, 19.09.2023, and 04.10.2023 called upon the Liquidator to release Rs. 2,58,61,562/-. The erstwhile Liquidator vide reply dated 05.10.2023 rejected the said claim and clarified that the amount would be dealt with strictly in accordance with the waterfall mechanism under the Code. The Respondent further submits that the Applicant has wrongfully interpreted the order dated 17.12.2020 and is attempting to seek release of Rs. 2,58,61,562/- in preference to other creditors, which cannot be permitted under the Code. It is submitted that the said amount forms part of the liquidation estate and cannot be treated as an asset held in trust.
15. The Respondent further submits that reliance is placed on order dated 03.04.2024, wherein the Tribunal held that amounts deducted as security from running bills are operational in nature and constitute Operational Debt and cannot be treated as trust assets, against which an appeal is pending before the NCLAT without any stay. It is submitted that the Applicant has failed to place any document demonstrating that Rs. 2,58,61,562/- was held or required to be held in trust by the Corporate Debtor. The Respondent submits that the arrangement

between the parties was purely contractual and commercial in nature and did not create any fiduciary relationship or trust, and accordingly, the amount already admitted as Operational Debt is liable to be dealt with only in accordance with Section 53 of the Code.

FINDINGS AND DECISION

16. We have carefully perused the documents placed on record. We have given our thoughtful and due consideration to the matter under consideration.
17. To recapitulate the factual matrix, the Principal Employer, M.P. Audyogik Kendra Vikas Nigam Ltd. (AKVN), Bhopal, awarded the principal contract dated 18.09.2013 to the Corporate Debtor for execution of civil works valued at Rs. 61,39,32,125/-. As per the terms of the contract, the Corporate Debtor was required to furnish (i) Performance Security by way of Bank Guarantee equivalent to 5% of the contract value, and (ii) Security Deposit in the form of Bank Guarantee equivalent to 5% of the contract value, apart from additional security deposit retainable from the running account bills. On the same day, the Corporate Debtor sublet the entire work to the Applicant under a Sub-Contract Agreement¹ on identical terms and conditions.
18. The Applicant furnished a Security Deposit Bank Guarantee amounting to Rs. 3,07,00,000/-; however, the Applicant failed to furnish the requisite Performance Security Bank Guarantee equivalent to 5% of the contract value as mandated under the Sub-Contract Agreement. Consequently, the Corporate Debtor deducted a sum of Rs. 2,58,61,562/- from the running account bills of the Applicant towards Performance Security. The work under the contract was completed on 31.03.2017.

¹ Page no 17-21 of the Application.

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19. Thereafter, CIRP was initiated against the Corporate Debtor on 23.02.2018 by this Tribunal in C.P. (IB) No. 294/07/HDB/2017, and Mr. Sutanu Sinha came to be appointed as the Resolution Professional. Subsequently, vide order dated 26.07.2019 read with Corrigendum dated 31.07.2019, the Corporate Debtor was ordered to be liquidated, and Mr. Sutanu Sinha was appointed as the Liquidator. Thereafter, vide order dated 29.10.2025, Mr. Purusottam Behera was appointed as the present Liquidator. The applicant had lodged a claim for Rs. 7,40,68,135/-, out of which Rs. 6,22,60,498/- was admitted, and that the admitted amount included a sum of Rs. 2,58,61,562/-, which is the subject matter of the present IA.
20. The principal issue that arises for consideration is whether the amount of Rs. 2,58,61,562/-, deducted and retained from the running account bills of the Applicant towards Performance Security due to non-furnishing of Counter Performance Bank Guarantee, was held by the Corporate Debtor in trust or in a fiduciary capacity for the benefit of the Applicant to fall outside the liquidation estate in terms of Section 36(4)(a)(i) of the Insolvency and Bankruptcy Code, 2016, or whether the same constitutes part of the liquidation estate liable to be dealt with in accordance with Section 53 of the Code.
21. At this juncture, it is relevant to note that an identical issue relating to the exclusion of amounts allegedly held in trust from the liquidation estate had already been considered by this Adjudicating Authority in I.A. No. 349 of 2021 in C.P. (IB) No. 294/07/HDB/2017, arising from the same liquidation proceedings. While interpreting the scope of Section 36(4)(a) of the Insolvency and Bankruptcy Code, 2016, and examining the distinction between a fiduciary relationship and a purely commercial arrangement, this Adjudicating Authority observed as follows:

14. In 'Trust', there is a fiduciary relationship between a trustor and trustee. In common parlance, there are three parties in a

trust: the beneficiary, the trustee, and the settlor. The individual who reposes confidence is the settlor of the trust. The "trustee" is the individual who accepts the confidence. The "beneficiary" is one for whose benefit the trustee accepts the confidence. There is also trust in commercial transactions.

15 To understand this position, we may also refer to the decision in The Official Liquidator, High Court, Madras, representing Manasuba and Co. (P) Ltd. in liquidation versus N. Chandranarayanan, 1972 SCC Online Mad 158:

"It is held therein that it is settled law that where a fiduciary relationship is established between the company and a third party and moneys are paid by the third party to the company in a situation in which the company occupies a fiduciary relationship, with an obligation to either use the money for a specified purpose or to retain and keep it with the company to meet certain contingencies, the said sum would be impressed with a fiduciary character and would not form part of the general assets of the company. Property thus held by an insolvent company in a fiduciary capacity, burdened with certain fiduciary obligations, is treated as property held in trust for the purposes of the insolvency laws and property held for a specific purpose. Such property or money held for a specific purpose is by law treated as clothed with a species of trust governed by the same principles and rules which apply to property held in express trust."

16. The aforementioned ruling clearly indicates that the nature of trust depends upon an express or implied contract between the parties.

22. The aforesaid findings make it clear that a trust arises only where there exists an express or implied fiduciary obligation between the parties. While Section 36(4)(a) of the Code excludes third-party assets and assets held in trust from the liquidation estate, the mere retention of amounts

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under a commercial contract does not, by itself, create a trust or fiduciary relationship. In the absence of such a fiduciary obligation, the asset or amount cannot be excluded from the liquidation estate under Section 36(4)(a) of the Code.

23. In the present case, the amount in question was deducted from the running bills of the Applicant towards Performance Security owing to the Applicant's failure to furnish the Counter Performance Bank Guarantee as required under the Sub-Contract Agreement. The arrangement between the parties was purely contractual and commercial in nature. No material has been placed on record to establish that the Corporate Debtor retained the amount in a fiduciary capacity or that it was earmarked as trust property for the exclusive benefit of the Applicant.
24. Furthermore, no provision of the Sub-Contract Agreement has been brought to our notice indicating that the deducted amount was required to be maintained separately or held in trust by the Corporate Debtor. The mere fact that the amount was reflected as payable in the books of account does not alter its contractual character or create a trustee-beneficiary relationship between the parties. Accordingly, the amount cannot be treated as trust property to fall outside the liquidation estate under Section 36(4)(a) of the Code.
25. The issue concerning the treatment of amounts retained by the Corporate Debtor has also been considered by this Adjudicating Authority in I.A. No. 349 of 2021 in C.P. (IB) No. 294/07/HDB/2017, arising out of the same liquidation proceedings. Further, this Adjudicating Authority finds support from the judgment of the Hon'ble NCLAT in **Aashish Mohan Gupta v. Hind Inn and Hotels Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 1282 of 2019**, decided on 12.02.2020, wherein the Hon'ble Appellate Tribunal held that retention money falls within the ambit of 'operational debt' under the Insolvency and Bankruptcy Code, 2016. The relevant extract is reproduced below:

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24 About the retention of amount by the Corporate Debtor, we also rely upon the judgment in Aashish Mohan Gupta v. Hind Inn and Hotels Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 1282 of 2019, decided on 12.02.2020, wherein the Hon'ble NCLAT held that the term 'operational debt' would include within its ambit a debt for payment of retention money. Therefore, the retention amount claimed by the Applicant shall also be treated as 'operational debt' and cannot have any priority in its repayment, and the same shall be paid in accordance with Section 53 of the IBC.

26. For the reasons recorded hereinabove, we are of the considered view that the Applicant has failed to establish that the amount of Rs.2,58,61,562/- retained towards Performance Security was held by the Corporate Debtor in a fiduciary capacity or like trust to fall within the exclusion contemplated under Section 36(4)(a)(i) of the Insolvency and Bankruptcy Code, 2016. The said amount forms part of the liquidation estate of the Corporate Debtor and is liable to be dealt with in accordance with the provisions of the Code, including the waterfall mechanism prescribed under Section 53 thereof. Consequently, the reliefs sought in the present Application cannot be granted.

Accordingly, I.A. (IBC) No. 540 of 2025 in C.P. (IB) No. 294/07/HDB/2017 is **dismissed.**

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)