IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
15-05-2026 AT 10:50 A.M.

Company Petition IB/205/2021
u/s. 7 of IBC, 2016

IN THE MATTER OF:
State Bank of India **…Financial Creditor**

AND

India Power Corporation Ltd **…Corporate Debtor**

C O R A M:-
SH. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SH. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

O R D E R

Item No. 1

Present: Mr. Shivansh, Learned Counsel for the Petitioner.

Mr. Anirban Bhattacharya, Learned Counsel for the Respondent.

Orders pronounced, recorded vide separate sheets.

In the result, this Company Petition IB/205/2021 is admitted.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I

CP (IB) No.205/7/HDB/2021

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority Rules), 2016, read with Section 60(2) of the Insolvency and Bankruptcy Code, 2016]

Between:

State Bank of India,
State Bank Bhavan, Madam Cama Road,
Mumbai – 400 021 and acting through
its Branch at Stressed Assets Management Branch,
Hyderabad (Branch Code:18359),
D.No.3-4-1013/A, 1st Floor, CAC,
TSRTC Bus Station, Kachiguda,
Hyderabad – 500 027, Represented by
its Authorised Representative Mr.T.Veerabhadra Rao

…Financial Creditor

And

M/s.India Power Corporation Limited,
Regd. Office: Centre for Excellence,
Plot No.X-1, 2 & 3, Block EP,
Sector V, Salt Lake, Kolkata – 700 091,
Represented by its Managing Director.

… Corporate Debtor

Date of Order: 15.05.2026

Coram:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Shri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Petitioner : Mr. Vivek Reddy, Senior Counsel along with Mr. Surabhi Khattar and Mr.D.Narender Naik, Advocates.

For the Respondent : Mr. Abhijeet Sinha, Senior Counsel alongwith Mr. Anirban Bhattacharya and Mr. Shreyan Reddy, Advocates

O R D E R

1) The present Petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code/IBC**) by State Bank of India (**Financial Creditor/SBI**) seeking initiation of the Corporate Insolvency Resolution Process (**CIRP**) against M/s.India Power Corporation Limited (**Corporate Debtor/IPCL**), in its capacity as a Corporate Guarantor for the financial facilities availed by M/s.Meenakshi Energy Limited (**Principal Borrower/MEL**).

2) The present Petition was earlier rejected by this Adjudicating Authority vide Order dated 30.10.2023. Aggrieved thereby, the Financial Creditor preferred an Appeal before the Hon'ble National Company Law Appellate Tribunal (**NCLAT**), which came to be dismissed. The Financial Creditor thereafter approached the Hon'ble Supreme Court by way of Civil Appeal bearing No. 8178 of 2023. The Hon'ble Supreme Court, vide order dated 14.02.2025, set aside the earlier orders and remanded the matter to this Adjudicating Authority with a direction to consider the case afresh, particularly taking into account the Rejoinder filed by the Financial Creditor.

3) For the sake of convenience, the documents relied upon by the Financial Creditor in the Petition shall be referred to as "**Exhibit-1**…**",** and those filed along with the Rejoinder shall be referred to as "**Annexure-1**…**".** Similarly, the documents filed by the Corporate Debtor/IPCL shall be referred to as "**Annexure-R1**…."

Petition

4) It is the case of the Financial Creditor that a Consortium of Lenders, comprising State Bank of India and its then Associate Banks, namely, State Bank of Bikaner and Jaipur (**SBBJ**), State Bank of Mysore (**SBM**), State Bank of Patiala (**SBP**), State Bank of Hyderabad (**SBH**) and State Bank of Travancore (**SBT**) and others (collectively referred as **SBI and Associate Banks**) sanctioned and disbursed various credit facilities to the Principal Borrower under multiple financing arrangements.

5) The Consortium extended financial assistance aggregating to Rs.552,00,00,000/- under the Common Loan Agreement dated 10.07.2009, as amended from time to time by Amendatory Agreements dated 30.05.2011, 24.01.2014 and 23.09.2016 (**Phase I Loan Agreements**).

6) The Consortium further extended term loan facilities of Rs.1296,35,00,000/- under the Common Loan Agreement dated 01.10.2010, as amended and restated by Agreements dated 30.01.2014, 26.12.2014 and 23.09.2016 (**Phase II Loan Agreements**).

7) The details of lender-wise disbursements are set out in **Exhibit–4** of the Petition. The summary of total debts sanctioned by the consortium of lenders and disbursed are given in the following table:

Sr. No.	Facility Agreement	Total amount sanctioned by the consortium lenders (Rs.in crores)	Total amount sanctioned by the Financial Creditor (Rs.in crores)	Amount disbursed (in Rs.)
1.	Phase I Loan Agreements	Facility: **1057**	1. SBI: 302 (including sub-limit of LC facility of 180)	1. SBI: (i) Rs.249,87,73,665/- (A/c.No.30919759304; and (ii) Rs.50,21,59,235/- (A/c.No.3221650929)

			2. SBH: 100 3. SBBJ: 50 4. SBM: 50 (including sub-limit of LC Facility of 50) 5. SBT: 50 **Total: 552**	2. SBH: Rs.99,34,90,586/- 3. SBBJ: Rs.49,17,62,197/- 4. SBM: Rs.49,68,07,646/- 5. SBT: Rs.49,99,99,174/- **Total: Rs.548,29,92,503/-**
2.	Phase II Loan Agreements	Facility:**3386.35** (i.e. 2340 by existing lenders and 1046.35 by refinancing lenders)	1. SBI: 896.35 (with foreign LC/little of comfort equivalent to 300) 2. SBH: 100 (with foreign LC/ domestic LC equivalent to 50) 3. SBBJ:100 (with foreign LC/ domestic LC equivalent to 100) 4. SBM: 100 (with foreign LC/ domestic LC equivalent to 60) 5. SBP: 100 (with foreign LC/ domestic LC equivalent to 100) **Total: 1296.35**	1. SBI : Rs.828,14,50,863/- 2. SBH : Rs.93,09,77,597/- 3. SBBJ: Rs.89,34,34,333/- 4. SBM : Rs.92,47,63,415/- 5. SBP : Rs.90,89,38,796/- **Total: Rs.1193,95,65,004/-**
3.	Additional Phase II Loan Agreements	Facility: **1131** (i.e. 222.84 – additional facility and 908.16 – standby facility)	1. SBI: 197.48 2. SBH: 50 3. SBBJ:48.29 4. SBM: 50 5. SBP: 50 **Total: 395.77**	These facilities were sanctioned but not disbursed

8) It is noted that the Associate Banks forming part of the lending Consortium were amalgamated with State Bank of India pursuant to a Gazette Notification (**Exhibit-1**) with effect from 01.04.2017. Consequently, all rights, interests and claims of the erstwhile Associate Banks stand vested in the Financial Creditor.

9) In order to secure the aforesaid facilities, various financing documents came to be executed. The Corporate Debtor executed Deeds of Guarantee dated 23.09.2016 in favour of the Security Trustee, SBICAP Trustee Company Limited, acting on behalf of the lenders, in respect of both the Phase-I and Phase-II facilities, thereby unconditionally guaranteeing repayment of the dues of the Principal Borrower. The relevant financing documents have been placed on record as **Exhibit-6**. The statement/schedule of default in respect of the Phase-I facility as on 31.01.2020 has been placed on record as **Exhibit-5**, duly supported by the financial statements.

10) Upon occurrence of default by the Principal Borrower in repayment of the loan amounts in terms of the financing documents, the guarantees executed by the Corporate Debtor came to be invoked by the Financial Creditor. Demand Notices were accordingly issued to the Corporate Debtor, namely: (i) Demand Notice dated 20.12.2017 (**Exhibit-8**) calling upon the Corporate Debtor to pay an amount of Rs.93,57,91,585/-; and (ii) Demand Notice dated 07.02.2020 (**Exhibit-17**) calling upon the Corporate Debtor to pay an amount of Rs.967,21,68,885.68/- in respect of the Phase-I facility. However, despite invocation of the guarantees, the Corporate Debtor failed to discharge its obligations as guarantor.

11) According to the Financial Creditor, the aforesaid failure on the part of the Corporate Debtor to honour its obligations under the Deeds of Guarantee dated 23.09.2016 constitutes a default within the meaning of Section 3(12) of the Code, thereby rendering the Corporate Debtor liable for initiation of CIRP under Section 7 of the Code.

Counter:

12) The Corporate Debtor has filed its counter affidavit opposing the Petition and disputing the existence of any financial debt and default.

13) Relying upon the judgment of the Hon'ble Supreme Court in ***Innoventive Industries Ltd v. ICICI Bank (2018) 1 SCC 407***, it is contended that in the absence of a legally enforceable debt, the present Petition is not maintainable. The Corporate Debtor has raised the following contentions:

A. No debt is due in Law

14) While not disputing the availing of financial facilities by the Principal Borrower/MEL, the Corporate Debtor has submitted that MEL had pledged shares held by IPCL, which had acquired approximately 95.07% of the equity shareholding of MEL from its erstwhile promoters around the year 2016. Upon acquisition of the shares of MEL, IPCL, being the holding company of MEL, executed two Deeds of Guarantee dated 23.09.2016, one in favour of SBICAP Trustee Company Limited, acting as Security Trustee in respect of the Phase-I facilities, and another in favour of the lenders in respect of the Phase-II facilities. IPCL and MEL also executed a Share Pledge Agreement dated 23.09.2016 in favour of SBICAP Trustee Company Limited.

15) When MEL defaulted in timely servicing of the principal repayments and interest payments, its account was classified as Non-Performing Assets (**NPA**) on 28.10.2017. Then, the SBI issued Notice on 07.08.2018 demanding repayments for the outstanding amount as on 31.07.2018 and on account of failure in making such payments by the MEL. Subsequently, the

SBI recalled the facilities availed by MEL and the entire exposure of SBI in Phase I Project and Phase II project became due and payable by MEL.

16) On 20.12.2017, a Notice of Demand and a Notice of Invocation of Pledge were issued by SBICAP Trustee as Security Trustee for the benefit of Phase I lenders and as agent for the benefit of Phase II lenders. Consequently, the pledged shares of MEL, which were held by IPCL, were sold/transferred to SBICAP Trustee who, on such transfer, became the beneficial owner of the shares.

17) It is claimed that when the pledged shares were invoked and transferred on 02.05.2018, the value of shares was in excess of Rs.6000 crores. The SBI in Form 1 has also declared the value of the assets of MEL at Rs.5400 Crores.

18) The SBI filed an Application under Section 7 of the IBC on 26.03.2019 bearing CP(IB) No.184/7/HDB/2019 for initiating CIRP against MEL. The total amount claimed was Rs.15,97,44,66,368.24. This Application was admitted by this Adjudicating Authority vide Order dated 07.11.2019 and the Order was upheld by the Hon'ble NCLAT in Company Appeal (AT) Insolvency Nos.1220/2019 and 1450/2019.

19) On the aforesaid basis, it is contended that the debt stood sufficiently secured by the pledged shares and that, upon invocation and transfer thereof, SBI allegedly realised value in excess of Rs.3636 crores. It is therefore contended that SBI ceased to be a financial creditor in terms of Regulation 58 of the SEBI (Depositories and Participants) Regulations, 1996 and Clause 2.6 of the Share Pledge Agreement dated 23.09.2016.

20) The Corporate Debtor has also placed reliance upon Clauses 1.3 and 2.1 of the Share Pledge Agreement dated 23.09.2016 and contended that, upon invocation and transfer of the pledged shares by IPCL in favour of SBICAP Trustee Company Limited on 02.05.2018, the debt liability of MEL stood discharged to that extent and SBI ceased to remain a financial creditor from the said date.

21) In view of the circumstances explained above, the present Petition filed by SBI purporting to be a Financial Creditor of IPCL for the purported default as on 31.01.2020 is not maintainable.

B. Issue of discharge of MEL is pending before the Hon'ble Supreme Court

22) The issue whether after the invocation of the pledge, debt already stands discharged is pending for adjudication at the final stage before the Hon'ble Supreme Court of India in Civil Appeal Nos. 3307/2020 and 3309/2020.

23) The Corporate Guarantee dated 23.09.2016 is in contravention of Regulation 5.13.2 of the West Bengal Electricity Regulatory Commission (Licencing and Conditions of Licence) Regulations, 2013 (**WBERC Regulations**). The Guarantee Agreement is in contravention of Law and resultantly it is void.

C. Validity of Corporate Guarantee

24) The IPCL is a deemed distribution licensee as per the first proviso to Section 14 of the Electricity Act, 2003 doing business in the area of supply specified in the license as defined under Section 2(17) of the 2003 Act. Thus, the IPCL is regulated entity and is regulated by the Electricity Act and the regulations framed thereunder and particularly, the WBERC Regulations.

25) Regulation 5.13.2 of WBERC Regulations, 2013 for having the written consent from the West Bengal Electricity Regulation Commission (**WBERC**) is intended to protect the interests of consumers and contravention of the said mandatory regulations make the Corporate Guarantee dated 23.09.2016 void and unenforceable in Law. Regulation 5.13.2 is in public interest because it has to ensure that the Licensee does not take upon itself any kind of obligation which make for an adverse effect on its regulated business.

26) Therefore, the Corporate Guarantee could not be provided without the prior consent of the WBERC. However, the IPCL was induced to provide the guarantee to the lenders on their specific opinion and advice that the prior approval of WBERC is not required. In this regard, the IPCL has referred to various correspondence/information including letters dated 29.07.2016 (**Annexure-2**), letter dated 14.09.2016 (**Annexure-3**), Opinion dated 19.09.2016 (**Annexure-4**), letter dated 22.09.2016 (**Annexure-5**), Affidavit dated 23.09.2016 (**Annexure-6**), WBERC Order dated 09.11.2017 (**Annexure-8**), letter dated 22.11.2017 (**Annexure-9**), letter dated 01.12.2017 (**Annexure-10**), letter dated 13.12.2017 (**Annexure-11**), letter dated 11.01.2018 (**Annexure-12**), copy of WBERC Order dated 07.08.2018 (**Annexure-13**), copy of the Application dated 26.10.2021 filed before WBERC (**Annexure-14**) and written statement filed by SBICAP Trustee in COS No.266 of 2017 (**Annexure-15**). These documents clearly show that IPCL did not agree to give Corporate Guarantee citing Regulation 5.13.2 of the WBERC Regulations, but as per lenders legal counsel, such guarantee can be given only to non-regulated assets and surplus from regulated assets. Even the Application of the IPCL to WBERC to give permission for such guarantee was declined vide Order dated 07.08.2018. In these

circumstances, the lenders allegedly coerced the Director of IPCL to agree to the terms and conditions of the Guarantee Agreement.

27) On the aforesaid basis, the Corporate Debtor has contended that the Corporate Guarantees dated 23.09.2016 are hit by Regulation 5.13.2 of the WBERC Regulations and are consequently void and unenforceable under Section 23 of the Indian Contract Act, 1872.

D. Effect of statutory prohibition

28) It is a settled Law that an act prohibited by statute, the same is void and the private agreements cannot alter the general law. The purpose behind enacting the Regulation 5.13.2 of the WBERC Regulations renders any giving of the Corporate Guarantee dated 23.09.2016 unenforceable in Law. When this agreement is unenforceable, no Court can lend its aid to a person who founds his cause of action upon an illegal act.

E. Limited recourse under the Guarantee

29) The Corporate Guarantee dated 23.09.2016 was framed in such a manner as to restrict the recourse of the lenders under the Corporate Guarantee only to the non-regulated assets and surplus assets from the Regulated Assets of the IPCL. In this regard, reference has been made to Clauses 2.1, 2.2 and 2.7.

30) The IBC does not make any distinction between the regulated and non-regulated assets of the Corporate Debtor and therefore, the Corporate Guarantee cannot be enforced in the IBC.

F. The Petition suffers from Suppressio Veri, Suggestio Falsi

31) The Financial Creditor has withheld the material facts from this Authority by not disclosing that the pledged item 2 mentioned at page 27 of the Petition/Application has been invoked and transferred to SBICAP Trustee being the Security Trustee of the Applicant and other Phase I lenders and the Security Agent of the Phase II lenders. Therefore, the Application suffers from Suppressio Veri, Suggestio Falsi.

G. The Form 1 is defective with no date of default mentioned in Part IV

32) The Application is defective because date of default has not been mentioned in Part IV.

Rejoinder

33) In the Rejoinder, the Financial Creditor has reiterated the averments made in the Petition and has sought to respond to the contentions raised in the counter affidavit.

34) It is clarified that the MEL was originally promoted by M/s.Meenakshi Energy and Infrastructure Holdings Private Limited. In 2013, a French Energy Company, Engie Global Developments B.V. (**Engie**) acquired approximately 89% shareholding in MEL. Subsequently, Engie initiated steps to exit the project. Thereafter, around February 2016, MEL came to be acquired by IPCL, pursuant to a transaction involving a bid cost of USD 1 (One) and a reward of USD 40 million payable by Engie to IPCL for completion of the transaction and further equity infusion of USD 300 million by Engie in MEL.

35) The lenders of MEL, including SBI, accorded their approval for transfer of shareholding from Engie to IPCL, subject to certain conditions.

(i) In this regard, an Unattested Share Pledge Agreement and a Power of Attorney were executed on 23.09.2016 among MEL, IPCL, and SBI Cap Trustee Company Limited for the benefit of Phase-I and Phase-II lenders. Under the said arrangement, IPCL pledged 100% of its shareholding to SBI Cap Trustee Company Limited for the benefit of the lenders. A copy of the Share Pledge Agreement has been marked as **Annexure- R1**.

(ii) Mr. Asok Kumar Goswami, the erstwhile Director of IPCL, filed an affidavit **Annexure R-2** dated 23.09.2016 on behalf of IPCL stating that IPCL is a distribution licensee under the WBERC Regulations, and therefore, no prior consent of the Commission was required for the said transaction.

(iii) Based on the said affidavit and subsequent discussions, IPCL, along with its group entity, executed a Deed of Guarantee dated 23.09.2016 in favour of the Phase-I and Phase-II lenders. In this context, specific reliance has been placed on Clauses 12, 17 and 18 of the said Deed of Guarantee by the Petitioners.

36) Engie exited MEL on 30.09.2016, pursuant to which IPCL received USD 40 million. However, the said amount was not infused into the Trust and Retention Account (**TRA**) for the Phase-II project as required under the lender agreements. IPCL, by letter dated 16.11.2016 (**Annexure R-3**), confirmed receipt of the said amount.

37) Defaults in repayment continued, leading to issuance of a demand notice dated 20.12.2017 (**Annexure-R4**) by SBI Cap Trustee Company Limited calling upon IPCL to pay Rs.93,57,91,585/- within seven days.

38) On the same day, a Notice under Section 176 of the Indian Contract Act was issued to the Corporate Debtor on behalf of Phase-I lenders for invocation of the pledge of shares of MEL held by IPCL under the Share Pledge Agreement. The total number of pledged shares was stated to be 3,81,15,06,509 (**Pledged Shares**).

39) MEL and IPCL challenged the invocation by filing COS No. 266 of 2017 before the Court of Hon'ble XXIV Additional Chief Judge-cum-Commercial Court, City Civil Court, Hyderabad, inter alia, seeking a declaration that the Deed of Corporate Guarantee dated 23.09.2016 is null and void (**Annexure-R6**). The said Civil Suit was subsequently withdrawn on 02.04.2019 without seeking or obtaining liberty to institute a fresh suit (**Annexure-R7**).

40) It is alleged that on 26.12.2017, MEL, in collusion with IPCL, issued 10,02,34,046 additional shares to IPCL with an intent to dilute the effect of invocation of pledge and defraud creditors. The said act is stated to be in violation of the Companies Act, 2013 and Rule 4(1) (g) of the Companies (Share Capital and Debentures) Rules, 2014, particularly when MEL had already been classified as NPA by the Phase-I lenders.

41) The amount of USD 40 million received from Engie was not infused as equity into the Phase-II project as required under the agreements with the lenders, thereby constituting a breach of contractual obligations. In view of these defaults, the Rural Electrification Corporation (**REC**) issued a notice

dated 04.01.2018 (**Annexure R-8**) declaring an event of default against MEL and IPCL.

42) In the Joint Lenders' Meeting held on 08.02.2018, MEL was directed to cancel the allotment of additional shares, failing which the lenders resolved to initiate legal action. Meanwhile, the pledged shares, upon invocation, were transferred to the demat account of SBI Cap Trustee Company Limited on 02.05.2018.

43) Despite such transfer, the pledged shares allegedly carried only limited voting rights of approximately 3.75%, as a result of which effective management and control of MEL continued to remain with MEL and IPCL. Reliance has also been placed upon various communications dated 18.01.2018, 05.02.2018, 16.02.2018, 25.05.2018, 11.06.2018 and 10.07.2019 addressed by MEL proposing settlement and negotiations, to demonstrate acknowledgment of the subsisting debt and liability.

44) IPCL filed Writ Petition No. 26999 of 2018 (**Annexure-R10**) before the Hon'ble High Court of Andhra Pradesh, Vijayawada, challenging the lenders' action for change of management, which was withdrawn on 15.02.2019 (**Annexure R-11**). Another Writ Petition No. 26977 of 2018 was filed before the Hon'ble High Court for State of Telangana and the State of Andhra Pradesh at Hyderabad challenging transfer of shares to SBI Cap Trustee Company Limited without valuation (**Annexure R-12**). This Writ Petition was also not pursued by the IPCL. In both the Writ Petitions, IPCL raised grounds similar to those taken in the present reply.

45) MEL also filed Writ Petition No. 30048 of 2018 (**Annexure R-13**) seeking to restrain coercive steps pursuant to recall notice dated 07.08.2018. Interim relief granted therein was vacated by Order dated 23.01.2019 (**Annexure R-**

14), wherein the High Court observed that issuance of additional shares after invocation of pledge did not appear to be justified. Aggrieved thereby, MEL preferred Writ Appeal No. 203 of 2019 before the Division Bench of Hon'ble High Court of Telangana at Hyderabad, which was dismissed by Order dated 17.04.2019.

46) Subsequent to the vacation of interim relief, SBI filed a Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 against MEL before this Authority seeking initiation of CIRP. The said petition came to be admitted by Order dated 07.11.2019 (**Exhibit-16**). The Admission Order was challenged by IPCL and its independent director, Mr. Debashish Som, by filing Company Appeal (AT) Insolvency Nos. 1220 of 2019 and 1450 of 2019 before the Hon'ble NCLAT, which were dismissed by judgment dated 10.09.2020.

47) Thereafter, IPCL and the said Director filed Civil Appeal Nos. 3307 and 3309 of 2020 (**Annexure R-15**) before the Hon'ble Supreme Court, which were subsequently withdrawn on 20.05.2020 (**Annexure R-16**).

48) Then SBI Cap Trustee Company Limited, acting on behalf of the lenders, issued a demand notice dated 07.02.2020 to IPCL in respect of the Corporate Guarantee furnished for the Phase-I facilities extended to MEL. By way of the said notice, IPCL was called upon to pay an amount of Rs.967,21,68,885.68 within a period of seven days from the date of receipt of the demand.

49) Upon failure of IPCL to comply with the said demand, a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 came to be filed on 26.02.2020 seeking initiation of CIRP against IPCL. The said petition was filed on the basis of default arising from invocation of the Corporate

Guarantee furnished by IPCL in respect of the Phase-I facilities, with the claimed default amount stated to be Rs.500,47,58,255.44.

50) In view of the aforesaid facts, the Petitioners have raised specific grounds to question the bona fides of IPCL/Corporate Guarantor.

A. Issue of invocation of pledge

51) The stand of IPCL that the debt stands discharged upon invocation of pledge is erroneous and contrary to law. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***PTC India Financial Services Limited vs. Venkateswarlu U Kari & Anr. (2022 SCC OnLine SC 608)*** (**Annexure R-17**), wherein it has been held that invocation of pledge and transfer of pledged shares does not by itself amount to satisfaction of the underlying debt, and the pledgee retains the right to recover the balance dues.

52) Transfer of pledged shares of MEL to SBI Cap Trustee Company Limited upon invocation of pledge was only for the purpose of enabling the trustee, on behalf of the lenders, to exercise its rights as a pledgee under Section 176 of the Indian Contract Act. Such transfer, therefore, does not extinguish the liability of IPCL under the Deed of Guarantee. It is also pointed out that IPCL had withdrawn Civil Appeal No. 3309 of 2020 before the Hon'ble Supreme Court, thereby abandoning its challenge in this regard.

B. Bar on challenge to Deed of Guarantee

53) IPCL is barred from challenging the validity of the Deed of Guarantee, having earlier raised an identical challenge in COS No. 266 of 2017 before the Hon'ble Additional Chief Judge-cum-Commercial Court, Hyderabad, seeking a declaration that the Deed of Guarantee dated 23.09.2016 is null and void. The said suit was withdrawn on 02.04.2019 without seeking or

obtaining liberty under Order XXIII Rule 1(3) of the Code of Civil Procedure, 1908 (**CPC**). Consequently, the issue regarding validity of the Deed of Guarantee has attained finality and cannot be re-agitated.

54) The subsequent conduct of IPCL also disentitles it from raising such challenge. After execution of the Deed of Guarantee, IPCL approached the WBERC in February 2017 seeking approval to issue the Corporate Guarantee for acquiring business activities beyond its licensed area under Regulation 5.13.2 of the applicable Licensing Regulations. The WBERC, by Order dated 09.11.2017, rejected the said request. At the time of making such application, IPCL was fully aware of the defaults committed by MEL and its obligations under the financing arrangements.

55) IPCL did not challenge the said Order dated 09.11.2017. Instead, it filed a fresh application dated 15.05.2018 (**Annexure R-18**) before WBERC again seeking approval to provide Corporate Guarantee. The WBERC, by Order dated 07.08.2018, observed that the financial position of IPCL did not permit extension of such guarantee and that the same may adversely affect its licensed operations.

56) Even after initiation of proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016, IPCL once again approached WBERC on 26.10.2021 seeking clarification as to whether prior approval was required for issuance of the Corporate Guarantee. The WBERC, by communication dated 22.12.2021 (**Annexure R-19**), directed IPCL to explain why action under Section 142 of the Electricity Act, 2003 should not be initiated against it. However, no finding was rendered by WBERC on the validity of the Deed of Guarantee.

57) It is emphasised that even in COS No. 266 of 2017, IPCL had relied upon the WBERC Order dated 09.11.2017 as part of its Cause of Action. Therefore, the subsequent attempt by IPCL to once again approach WBERC on the same issue is contended to be mala fide and a calculated attempt to create a fresh Cause of Action for re-agitating an issue which has already attained finality.

C. Existence of debt and default already ascertained by this Authority

58) The existence of debt and default has already been adjudicated and established by this Adjudicating Authority in CP (IB) No. 184/7/HDB/2019 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 against MEL by SBI. The Order of Admission passed therein has attained finality, as the Appeals preferred against the said Order in Company Appeal (AT) Nos. 1220 of 2019 and 1450 of 2019 were dismissed by the Hon'ble NCLAT, and the Civil Appeal Nos. 3307 of 2020 and 3309 of 2020 filed before the Hon'ble Supreme Court were subsequently withdrawn. Accordingly, the issue of existence of debt and default stands conclusively determined.

59) It is further evident that IPCL has, on multiple occasions, acknowledged its liability towards the lenders. In I.A. No. 648 of 2021 filed in CP (IB) No. 184/7/HDB/2019 (**Annexures R-20 and R-21**), IPCL has, inter alia, admitted that (i) the CIRP against MEL was rightly initiated; (ii) invocation of pledge by SBI Cap Trustee Company Limited does not result in discharge of the underlying debt; (iii) IPCL, as Corporate Guarantor, is liable for the debt of MEL, its liability being co-extensive; and (iv) the Deed of Guarantee is valid, subsisting, and enforceable.

60) Apart from the above, MEL as well as IPCL had, from time to time, submitted proposals for settlement of dues, including communications dated 18.01.2018, 05.02.2018, 16.02.2018, 25.05.2018, 11.06.2018, and 10.07.2019. These communications further reinforce the acknowledgment of liability and subsistence of debt.

D. Corporate Guarantee is valid and subsisting

61) The Deed of Corporate Guarantee was executed on 23.09.2016. Prior to its execution, an affidavit dated 23.09.2016 was filed by Mr. Ashok Kumar Goswami, erstwhile Director of IPCL, certifying that IPCL, being a distribution licensee under the applicable regulations of the WBERC Regulations, was not required to obtain prior approval for issuance of the Corporate Guarantee.

62) It is evident that several discussions and meetings had taken place between IPCL and the lenders prior to execution of the Corporate Guarantee. The lenders, including SBI, had accorded their approval for transfer of Engie's stake in MEL to IPCL, subject to the condition that IPCL would step into the position of the outgoing promoter and assume its obligations by providing undertakings and a Corporate Guarantee under the financing documents. The execution of the Corporate Guarantee thus formed a fundamental condition for change in management and substitution of the security earlier provided by the outgoing promoter.

63) The said arrangement was accepted by IPCL as part of the transaction and was not the result of any coercion or undue influence by the lenders. There is no material to suggest that the lenders compelled IPCL to execute the Corporate Guarantee. On the contrary, the execution of the guarantee was a

commercial decision undertaken by IPCL as part of acquisition of control over MEL.

64) Insofar as the issue of Regulatory Approval is concerned, it is contended that no prior approval of WBERC was required at the time of execution of the Corporate Guarantee, particularly when IPCL proposed to service its obligations from non-regulated revenues and permissible surplus. The Petitioners have also placed reliance on Clauses 2.1, 12, 17, and 18 of the Deed of Guarantee in this regard.

65) It is a settled principle of Law that a party cannot take advantage of its own wrong. Even assuming that IPCL failed to obtain any approval at a later stage, the same cannot invalidate the Corporate Guarantee, particularly when such situation arose due to the conduct and defaults attributable to IPCL itself.

66) It is further noted that IPCL approached WBERC in February 2017 seeking approval under Regulation 5.13.2 of the applicable Licensing Regulations. The said request was rejected by Order dated 09.11.2017. IPCL did not challenge the said Order and instead sought to reagitate the issue by filing a fresh application and subsequently by approaching WBERC again on 26.10.2021 seeking clarification.

67) Such repeated attempts to approach the regulator on the same issue, despite earlier rejection and without pursuing appellate remedies, are indicative of a mala fide attempt to create a fresh Cause of Action and avoid liability under the Corporate Guarantee.

68) In the aforesaid circumstances, it is contended that there is no infirmity in the Deed of Corporate Guarantee executed by IPCL, and the challenge raised is merely an attempt to evade its contractual and legal obligation.

E. No distinction between regulated and non-regulated assets

69) IPCL has sought to draw an artificial distinction between regulated and non-regulated assets, which is wholly irrelevant for adjudication of the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016. The Code does not contemplate any such distinction while determining the existence of debt and default.

70) The interpretation advanced by IPCL, if accepted, would render entities engaged in regulated sectors immune from initiation of Insolvency Proceedings under the Code, which could not have been the legislative intent. The Scheme of the Code does not exclude regulated entities from its ambit, and the CIRP framework applies uniformly, subject only to limited sector-specific considerations.

71) It is pertinent to note that several regulated entities have undergone CIRP under the Code, including Companies in Sectors such as Telecommunications and Infrastructure, where core assets are subject to regulatory oversight. Therefore, the mere existence of regulated assets cannot be a ground to avoid insolvency proceedings.

72) Acceptance of the contention of IPCL would lead to an anomalous consequence whereby entities operating in sectors such as power, oil and gas, roads, and telecommunications would effectively stand insulated from insolvency proceedings, which is contrary to the object and purpose of the Code.

F. Section 7 Petition is complete

73) The present petition under Section 7 is complete in all respects and is supported by all relevant documents, including the demand notices dated 20.12.2017 and 07.02.2020, evidencing default and invocation of the Corporate Guarantee.

G. Manner of IPCL – Delay and Abuse of Process

74) The conduct of IPCL demonstrates a consistent attempt to delay and disrupt the present proceedings. The mala fide intent is evident from the fact that IPCL has repeatedly initiated multiple proceedings across various Fora, which are stated to be frivolous and aimed at obstructing enforcement of the lenders' rights.

75) It is further alleged that IPCL, in collusion with MEL, caused issuance of 10,02,34,046 equity shares at par to itself on extremely short notice to the shareholders. As a result, the effective voting rights of the pledged shares stood diluted to approximately 3.75%, thereby enabling IPCL to retain control over the composition of the Board and management of MEL, despite invocation of pledge by the lenders.

76) Petitioners have referred to a series of proceedings initiated by IPCL and/or MEL, including COS No. 266 of 2017, W.P. Nos. 26977 of 2018 and 26999 of 2018, Company Petition No. 660/241/HDB/2018, Company Appeal No. 1220 of 2019, Civil Appeal No. 3307 of 2020, various interlocutory applications including I.A. Nos. 586 and 567 of 2021, Transfer Petition No. 81 of 2021 in CP (IB) No. 205/2021, I.A. No. 648 of 2021 in CP (IB) No. 184/7/HDB/2019, proceedings before Regulatory Authorities, and Money Suit No. 01 of 2022, among others.

77) The multiplicity of such proceedings, raising substantially similar issues, reflects a deliberate strategy to protract litigation and stall the Corporate Insolvency Resolution Process. It is further contended that several of these proceedings have either been withdrawn or dismissed, thereby indicating that the challenges raised were devoid of merit.

78) In the aforesaid circumstances, it is asserted that the conduct of IPCL amounts to an abuse of the process of Law, undertaken with the sole intent to delay the proceedings and evade its liabilities under the financing documents.

H. IPCL seeking to evade liability by raising untenable defences

79) IPCL is seeking to evade its liability under the Deed of Corporate Guarantee by raising untenable and frivolous defences. It is pertinent to note that IPCL acquired MEL for a nominal consideration of USD 1, as part of a transaction which required, inter alia, infusion of USD 40 million as equity into the Phase-II project.

80) Despite repeated requests from the lenders, IPCL failed to infuse the said amount of USD 40 million into the Phase-II project in terms of the agreed financing structure. Instead, it is alleged that IPCL retained the said funds without complying with its contractual obligations, thereby acting in breach of the agreed terms.

81) Such conduct is relied upon to demonstrate lack of bona fides on the part of IPCL and has, according to the Petitioners, contributed to the financial distress of MEL, ultimately leading to initiation of insolvency proceedings.

82) Further, IPCL has taken inconsistent and contradictory stands at various stages of the proceedings, depending upon its convenience, and the present defence is an afterthought raised only to avoid its liability.

83) It is also noted that IPCL, of its own volition, withdrew Civil Appeal No. 3309 of 2020 before the Hon'ble Supreme Court shortly after the pronouncement of the judgment in ***PTC India Financial Services Limited vs. Venkateswarlu Kari & Anr. supra***, which is relied upon by the Petitioners. Such withdrawal is stated to be indicative of the untenability of the stand now sought to be urged.

I. IPCL is independently liable under the Indemnity Agreement

84) Without prejudice to the foregoing submissions, it is contended that IPCL is independently liable under the Indemnity Agreement dated 23.09.2016 (**Annexure R-24**), whereby IPCL undertook to fully indemnify the lenders against any losses, damages, costs, claims, or expenses arising out of the financing arrangements. In this regard, reliance is placed on Clause 1 of the said Indemnity Agreement.

85) The liability under the Indemnity Agreement is distinct and independent. Therefore, even assuming, without admitting, that the Deed of Corporate Guarantee is held to be invalid, IPCL would nonetheless remain liable to indemnify the lenders, including SBI, in terms of the said Agreement.

86) Further, under Section 5(8) of the Insolvency and Bankruptcy Code, 2016, "financial debt" includes any liability in respect of an indemnity. Accordingly, the obligation of IPCL under the Indemnity Agreement squarely falls within the ambit of financial debt.

87) In the present case, since no payment has been made by IPCL towards its indemnity obligations, the liability remains due and payable, thereby constituting a subsisting debt and default.

Written Submissions of Financial Creditor/SBI

88) The Financial Creditor submits that in 2016, IPCL acquired control of MEL for a nominal consideration of USD 1 pursuant to a structured commercial arrangement involving the exit of the erstwhile promoter, Engie Global Developments B.V. As part of the said Arrangement, Engie infused approximately USD 300 million into MEL and an additional amount of approximately USD 40 million was also made available/received by IPCL, which, according to the Financial Creditor, was required to be infused into MEL. However, IPCL allegedly failed to infuse the said USD 40 million into MEL and also neglected to take necessary steps for operationalisation of the Power Purchase Agreements. At the time of acquisition of MEL, IPCL executed an Unconditional Deed of Corporate Guarantee dated 23.09.2016 guaranteeing repayment of MEL's debts. Reliance is placed upon Clauses 17(ii) and 17(iv) of the Deed of Guarantee, whereby IPCL represented that all necessary Authorisations and Regulatory Approvals had been obtained. Reliance is also placed upon an Affidavit furnished by a Director of IPCL affirming that prior approval of the WBERC was not required for execution of the Corporate Guarantee under the applicable WBERC Regulations.

89) MEL committed default on 31.07.2017. Thereafter, IPCL approached WBERC by communications dated 17.08.2017 and 15.05.2018 seeking to avoid its obligations under the Deed of Guarantee. After issuance of notice in the present Section 7 Petition, IPCL again approached WBERC on 26.10.2021 seeking clarification as to whether prior approval was required

for issuance of the Corporate Guarantee. However, WBERC, by Order dated 22.12.2021, merely issued a show cause notice to IPCL regarding alleged non-compliance and did not render any finding declaring the Deed of Guarantee invalid.

90) IPCL had also instituted COS No. 266 of 2017 before the Commercial Court at Hyderabad seeking declaration that the Deed of Guarantee was illegal, arbitrary, null and void on the ground that prior approval of WBERC had not been obtained and that IPCL had allegedly been induced by the lenders to furnish the Guarantee. The said suit, however, came to be unconditionally withdrawn on 02.04.2019 without liberty to institute a fresh suit.

91) MEL was admitted into CIRP by Order dated 07.11.2019, thereby crystallising the liability of IPCL as Guarantor. Reference is also made to MS (Com.) No. 48 of 2022 filed by IPCL before the Commercial Court at Alipore challenging the validity of the Deed of Guarantee. In the said proceedings, the Commercial Court, by Order dated 09.09.2022, vacated the exparte ad interim injunction earlier granted in favour of IPCL and observed, inter alia, that IPCL was fully aware of the WBERC Regulations at the time of furnishing the guarantee and that there were no averments disclosing any fraud practised upon IPCL. The Commercial Court further observed that IPCL could not be permitted to take advantage of its own wrong. An appeal preferred before the Hon'ble Calcutta High Court came to be dismissed by order dated 16.05.2023. On the strength of the aforesaid proceedings, it is contended that no Court or Tribunal has, till date, declared the Deed of Guarantee to be invalid. Reliance is also placed upon the rejoinder filed by IPCL in IA No. 648 of 2021 in the CIRP proceedings of MEL, wherein IPCL admitted its status as Guarantor of MEL.

92) It is further submitted that IPCL falls within the definition of "corporate guarantor" under Section 5(5A) of the Code and that the liability of the guarantor is co-extensive with that of the principal borrower. It is contended that under Section 7 of the Code, the scope of inquiry is limited to determining the existence of debt and default and does not extend to adjudication upon the validity of the Guarantee. In support thereof, reliance is placed upon ***Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407***, ***E.S. Krishnamurthy & Ors. v. M/s Bharath Hi Tech Builders Pvt. Ltd. (2022) 3 SCC 161***, ***M. Suresh Kumar Reddy v. Canara Bank (2023) 8 SCC 387***, ***Peninsula Holdings and Investments Pvt. Ltd. v. JM Financial Credit Solutions Ltd. & Anr. CA(AT)(I) No. 1393 of 2025***, ***NCLAT Delhi Order dated 29.10.2025, JM Financial Credit Solutions Ltd. v. HEM Infrastructure and Property Developers Pvt. Ltd. C.P.(IB)-90(MB)/C-V/2024***, ***Order dated 14.07.2025, Mauritius Commercial Bank v. Varun Corporation Ltd. 2017 SCC Online NCLT 2424***, ***Baobab Broadband Ltd. v. Gemini Communication Ltd. 2018 SCC Online NCLT 32410***, ***Punjab National Bank v. M/s Superior Industries Limited 2023 SCC OnLine NCLT 62***, and ***Yes Bank Limited v. Zee Learn Limited CP (IB) 301/MB/C-1/2022***.

93) Further, under Clauses 2.3 and 2.5 of the Deed of Guarantee, IPCL had irrevocably and unconditionally guaranteed payment of the guaranteed obligations and the demand certificate dated 07.02.2020 constituted conclusive evidence of the amount due and payable by IPCL. The debt and default of MEL stood established by Order dated 07.11.2019 and IPCL had also withdrawn its Appeal before the Hon'ble Supreme Court filed against the said Order.

94) It is lastly submitted that IPCL, through its conduct, has admitted its status as Guarantor and is estopped from disputing the validity of the Deed of Guarantee. Reliance is placed upon ***Deewan Singh v. Rajendra Pd. Ardevi (2007) 10 SCC 528***, ***Satyan Kasturi v. SBI 2022 SCC OnLine NCLAT 4093*** and ***SREI Equipment Finance v. Rajiv Anand, (2020) 9 SCC 623***, to contend that admissions made in pleadings are binding even if the proceedings are subsequently withdrawn. It is lastly submitted that despite the established debt and default of MEL and admission of its status as Guarantor, IPCL has failed to discharge its obligations under the Deed of Guarantee and has filed multiple applications in the present proceedings with the intention of delaying the CIRP proceedings initiated against it.

Written Submissions of Corporate Debtor/IPCL

95) The Corporate Debtor submits that this Adjudicating Authority, vide Order dated 30.10.2023, had already dismissed the present Section 7 application on merits after considering the pleadings, rejoinder, additional documents and contentions advanced by the parties. Although the Hon'ble Supreme Court, vide order dated 14.02.2025 passed in Civil Appeal No. 8178 of 2023, remanded the matter for fresh consideration, it specifically clarified that no opinion on merits had been expressed. According to the Corporate Debtor, no new facts or averments have been brought on record by the Financial Creditor after remand so as to warrant a departure from the findings previously rendered by this Adjudicating Authority.

96) MEL had entered into the Original Common Loan Agreement dated 10.07.2009 for development of a power project and, thereafter, pursuant to the Share Purchase Agreement executed between Engie Group and IPCL,

the lenders required IPCL to furnish Corporate Guarantees under the Amendment Agreement dated 23.09.2016. IPCL, being a Regulated Distribution Licensee under the Electricity Act, 2003 and the WBERC (Licensing and Conditions of Licence) Regulations, 2013, was mandatorily required under Regulation 5.13.2 to obtain prior written consent of WBERC before issuance of the Corporate Guarantees. According to the Corporate Debtor, IPCL had raised the issue of prior approval with REC through letters dated 29.07.2016 and 14.09.2016; however, the lenders and their legal advisors represented that no prior approval was required. Reference is made to the legal opinions obtained by the lenders from Justice M. Karpaga Vinayagam, Cyril Amarchand Mangaldas, and Mr. M.G. Ramachandran, Senior Advocate, as well as to the Affidavit dated 23.09.2016 furnished by the Director of IPCL. It is further submitted that IPCL subsequently informed SBI vide letter dated 22.11.2017 that the Corporate Guarantees were unenforceable for want of prior approval from WBERC. Reliance is also placed upon the orders passed by WBERC dated 09.11.2017, 07.08.2018 and 22.12.2021.

97) It is contended that the Corporate Guarantees are void and unenforceable in Law in view of Regulation 5.13.2 of the WBERC Regulations read with Section 146 of the Electricity Act, 2003 and Sections 10 and 23 (a) of the Indian Contract Act, 1872, and consequently there exists no valid contract of guarantee, debt or default under the Insolvency and Bankruptcy Code, 2016. Reliance is placed upon ***Mannalal Khetan v. Kedar Nath Khetan, AIR 1977 SC 536*** and ***Asha John Divianathan v. Vikram Malhotra & Ors., 2021 SCC OnLine SC 147***, to contend that contracts entered into in violation of statutory prohibitions are void. It is further contended that the lenders were aware of the statutory requirement and are therefore in *pari delicto*.

Reliance is placed upon ***Loop Telecom and Trading Limited v. Union of India and Another, (2022) 6 SCC 762*** and ***Holman v. Johnson*** to contend that no Court or Tribunal will come to the aid of the parties who are at a mutual fault and violation of the statutes. It is also argued that there can be no estoppel against statute and therefore no admission or undertaking by IPCL can validate the guarantees.

98) No default has occurred in terms of the purported Deed of Guarantee dated 23.09.2016. It is contended that while the Section 7 petition mentions the date of default as 31.01.2020, the demand certificates relied upon by the Financial Creditor are dated 20.12.2017 and 07.02.2020, both requiring payment within seven days, and therefore the alleged date of default does not correspond with the invocation notices. Reliance is placed upon ***Syndicate Bank v. Channaveerappa Beleri & Ors., (2006) 11 SCC 506*** and ***Pooja Ramesh Singh v. State Bank of India, 2023 SCC OnLine NCLAT 193***, to contend that in case of an on-demand guarantee, default arises only upon expiry of the period specified in the invocation notice. Reliance is also placed upon ***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd., (2020) 15 SCC 1*** and ***Royal Construction v. Gannon Dunkerley & Co. Ltd., 2025 SCC OnLine NCLAT 618***, to contend that the Adjudicating Authority cannot alter the date of default mentioned in Part IV of the Section 7 application.

99) In response to the submissions of the Financial Creditor, it is contended that reliance placed on ***Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407*** is misconceived as the said judgment itself recognises that a debt may not be due if it is not payable in law. Reliance is also placed upon ***State of Maharashtra v. M.N. Kaul and Ors., AIR 1967 SC 1634***; ***Paschimanchal Vidyut Vitran Nigam Limited v. Raman Ispat Private***

Limited and Others, 2023 SCC OnLine SC 842; ***Roseland Buildtech Pvt. Ltd. v. Vihaan 43 Reality Pvt. Ltd. and Ors., C.S. (Comm.) 812/2025***; ***Kewal Krishan v. Rajesh Kumar, (2022) 18 SCC 489***; and ***Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330***.

100) We have heard Learned Senior Counsels for both the parties and have gone through the entire records including written submissions of the parties.

101) On the basis of the pleadings, documents placed on record, and the submissions advanced by the parties, the following points/issues arise for consideration:

(i) Whether the Deed of Corporate Guarantee dated 23.09.2016 was obtained by fraud, coercion, undue influence or misrepresentation, as alleged by the Corporate Debtor/IPCL?

(ii) If Point (i) is answered in negative, whether the said Deed of Corporate Guarantee is void or voidable or otherwise unenforceable?

(iii) Whether IPCL is barred from challenging the validity and enforceability of the Deed of Corporate Guarantee in view of its prior conduct, admissions and earlier proceedings?

(iv) Whether there exist a financial debt and default on the part of the Corporate Debtor/IPCL within the meaning of Section 7 of the Insolvency and Bankruptcy Code, 2016?

(v) Relief.

Findings

102) Before adverting to the issues framed for consideration, it would be apposite to briefly notice the broad factual background giving rise to the present proceedings. The present Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 has been filed by SBI against IPCL in its capacity as Corporate Guarantor for the credit facilities availed by MEL. The execution of the Deed of Corporate Guarantee dated 23.09.2016 forms the central basis of the present proceedings.

103) It is not in dispute that MEL had availed substantial financial facilities from a Consortium of Lenders led by SBI under the Phase-I and Phase-II financing arrangements. Subsequently, pursuant to acquisition of control over MEL by IPCL from the erstwhile promoter Engie Group in the year 2016, IPCL executed the Deed of Corporate Guarantee dated 23.09.2016 in favour of the Lenders/Security Trustee in relation to the facilities extended to MEL.

104) Disputes arose after MEL committed defaults in repayment of the financial facilities. Following invocation of the pledge and issuance of demand notices by the lenders, several proceedings came to be initiated by MEL and IPCL before different Fora, including civil suits, writ proceedings, proceedings before WBERC, insolvency proceedings against MEL and the present proceedings against IPCL. The principal defence of IPCL in the present proceedings is that the Deed of Corporate Guarantee is void and unenforceable for alleged non-compliance with Regulation 5.13.2 of the WBERC Regulations and further that the same was procured by coercion, misrepresentation, undue influence etc.

A. Validity and Voluntary Execution of the Deed of Corporate Guarantee

105) The principal defence raised by the Corporate Debtor under this issue is that the Deed of Corporate Guarantee dated 23.09.2016 was not voluntarily executed and that the same was allegedly obtained by fraud, coercion, undue influence and misrepresentation. However, it is significant to note at the outset that the execution of the said Deed of Guarantee itself has never been denied by IPCL, either in the present proceedings or in the earlier proceedings initiated by it before different Fora.

106) Learned Senior Counsel appearing for the Corporate Debtor has vehemently contended that IPCL was compelled to execute the Corporate Guarantee on the basis of the stand taken by SBI and the Consortium Lenders that prior approval of the WBERC was not required under Regulation 5.13.2 of the WBERC Regulations, 2013. According to the Corporate Debtor, the execution of the Guarantee Deed was not voluntary and was induced by the legal opinions obtained by the lenders regarding the Regulatory requirements.

107) Per contra, Learned Senior Counsel appearing for the Financial Creditor has submitted that the Corporate Debtor had independently obtained legal advice and consciously took a commercial decision to execute the Corporate Guarantee. It is contended that merely because parties relied upon legal opinions while entering into a commercial transaction, the same cannot constitute fraud, coercion, undue influence or misrepresentation within the meaning of the Indian Contract Act, 1872.

108) It is also pertinent to note that the present dispute arises out of a structured commercial transaction involving the exit of Engie Global Developments B.V. from MEL and the induction of IPCL as the incoming promoter of MEL, subject to specifically negotiated rights and obligations, including furnishing of the Deed of Corporate Guarantee dated 23.09.2016 (**Exhibit-6**) in favour of the Consortium Lenders. The material placed on record reflects that IPCL acquired control of MEL for a nominal consideration of USD 1, while the outgoing promoter, Engie, infused approximately USD 300 million (approximately Rs.1994.40 crores) into MEL and additionally provided approximately USD 40 million (approximately Rs.265.40 crores) under the overall transaction structure. It was in the backdrop of this negotiated restructuring arrangement that IPCL furnished the unconditional Corporate Guarantee dated 23.09.2016 securing repayment of MEL's debt obligations. The material on record further indicates that disputes were also raised regarding infusion/utilisation of the amounts contemplated under the transaction structure. The obligations now sought to be avoided were thus consciously undertaken by IPCL as part of a negotiated commercial arrangement entered into between commercially sophisticated entities fully aware of their respective rights, liabilities and commercial interests.

109) It is also relevant to note that contemporaneously with the execution of the Deed of Corporate Guarantee, IPCL had also executed the Indemnity Agreement (**Annexure R-24**) dated 23.09.2016 as part of the same restructuring and financing framework. The execution of multiple interrelated transaction documents, including the Corporate Guarantee, indemnity obligations and supporting representations, clearly indicates conscious participation by IPCL in the overall commercial arrangement and

is inconsistent with the subsequent plea that the transaction was involuntary or obtained by coercion or undue influence or fraud.

110) Where commercially experienced entities voluntarily enter into a negotiated Commercial Arrangement after obtaining legal and financial advice, such transaction cannot lightly be invalidated on vague allegations of fraud, coercion or undue influence. Merely because the lenders proceeded on the basis of a legal opinion that prior approval under Regulation 5.13.2 of the WBERC Regulations was not necessary, the same, even if subsequently disputed or found to be erroneous, would not by itself constitute fraud, coercion, undue influence or misrepresentation within the meaning of the Indian Contract Act, 1872, in the absence of any material concealment or intentional deception.

111) It is equally well settled that commercial compulsion or financial pressure arising out of a negotiated Restructuring Arrangement cannot, by itself, amount to coercion under Section 15 of the Indian Contract Act, 1872, unless accompanied by an unlawful threat, prohibited act or domination of will. In the present case, no material has been placed on record to establish any such unlawful conduct on the part of the Financial Creditor or the Consortium Lenders. On the contrary, the surrounding circumstances indicate that execution of the Corporate Guarantee formed an integral part of the overall Restructuring and Financing Arrangement pursuant to which IPCL acquired control and corresponding commercial rights in relation to MEL.

112) Significantly, no contemporaneous protest or objection was raised by IPCL either at the time of execution of the Corporate Guarantee or immediately thereafter alleging fraud, coercion or undue influence. On the contrary, IPCL acted upon the transaction and permitted the arrangement to continue

without raising any challenge to the validity of the Guarantee Deed. It was only after MEL committed default on 31.07.2017 and enforcement and recovery proceedings came to be initiated before various Fora that IPCL began questioning the validity and enforceability of the Corporate Guarantee. Such belated assertions, raised only after occurrence of default and commencement of enforcement proceedings, materially diminish the credibility of the defence now sought to be advanced.

113) In this regard, reliance may also be placed on the judgments of the Hon'ble Supreme Court in ***Central Inland Water Transport Corporation Limited v. Brojanath Ganguly, AIR 1986 SC 1571*** and ***Phulchand Exports Ltd. v. OOO Patriot (2011)10 SCC 300****,* wherein the distinction between unequal bargaining situations and commercial contracts voluntarily entered into between parties with comparable bargaining strength has been recognized. The facts of the present case clearly indicate a negotiated commercial arrangement rather than a transaction induced by coercion or undue influence. The surrounding circumstances, commercial structure of the transaction and subsequent conduct of the parties are all inconsistent with the plea of involuntary execution now sought to be advanced by IPCL.

114) It is well settled that allegations of fraud, coercion, undue influence etc are serious allegations which must be specifically pleaded and strictly proved. The burden lies heavily upon the party making such allegations. Where fraud, misrepresentation, coercion or undue influence is alleged in relation to the execution of a document, particulars thereof must be specifically pleaded and proved. [See ***Roshan Lal & Ors v. Kartar Chand & Ors., Latest HLJ 2002(HP)].*** In ***Bishundeo Narain and Anr. v. Seogeni Rai and Ors. AIR 1951 SC 280***, the Hon'ble Supreme Court held that general

allegations are insufficient and that full particulars constituting fraud, undue influence or coercion must be specifically set out in the pleadings. Similar principles were reiterated in ***Varanasaya Sanskrit Vishwavidyalaya v. Dr. Rajkishore Tripathi AIR 1977 SC 615.*** In ***Shrisht Dhawan v. Shaw Brothers, (1992) 1 SCC 534***, the Hon'ble Supreme Court explained that fraud involves deliberate deception and intentional misrepresentation of fact. However, the pleadings placed on record do not disclose the requisite particulars constituting fraud, coercion, undue influence or intentional misrepresentation as required in law.

115) At this juncture, it would be apposite to refer to the Affidavit dated 23.09.2016 (**Annexure R-2**) sworn by Mr. Asok Kumar Goswami, Director of IPCL, who had executed the Corporate Guarantee on behalf of the Corporate Debtor. The relevant extract of the Affidavit reads as follows:

"I, the Deponent, Asok Kumar Goswami, son of Late Murari Mohan Goswami and Director of India Power Corporation Limited ("IPCL"), aged about 69 (sixty nine) years, residing at B-35 Jalvayu Vihar, Saltlake, Kolkata, India – 700 093, do hereby solemnly affirm, declare and say to SBICAP Trustee Company Limited as follows:

1. *That I, Asok Kumar Goswami, am the Director of IPCL and am duly authorised by the board of directors of IPCL to make this declaration.*

2. *I am aware of the terms and conditions of the Amendment Agreement dated September 23, 2016 to the Common Loan Agreement dated July 10, 2009 as amended from time to time, executed inter-alia between the Borrower and the Phase I Lenders (the "Common Loan Agreement"); and*

3. *That in relation to change in shareholding of MEPL and in accordance with the terms of Common Loan Agreement, IPCL as the new promoter of MEPL is required to furnish a corporate guarantee in favour of the Phase I Lenders ("Corporate Guarantee").*

> 4. *That, I hereby certify, declare and confirm on behalf of IPCL that IPCL is a distribution licensee in terms of the West Bengal Electricity Regulatory Commission (Licensing and Conditions of Licence) Regulations, 2013 and it is not required to obtain the prior consent of the West Bengal Electricity Regulatory Commission for issuing the Corporate Guarantee in accordance with terms thereof.*

116) The aforesaid Affidavit assumes considerable significance. Firstly, it clearly demonstrates that the execution of the Corporate Guarantee was a conscious and informed commercial decision taken by IPCL through its Board of Directors. Secondly, the deponent expressly certified and confirmed that no prior approval of the WBERC was required for issuance of the Corporate Guarantee. Thirdly, the Affidavit categorically records that the deponent was fully aware of the terms and conditions of the Amendment Agreement and the Common Loan Agreement. Such declarations made contemporaneously in the course of a commercial financing transaction cannot be lightly ignored.

117) The mere existence of differing legal opinions regarding applicability of Regulation 5.13.2 of the WBERC Regulations cannot, by itself, render the transaction fraudulent or coercive. Commercial parties routinely obtain legal opinions on regulatory issues before entering into financing arrangements. In the present case, the contemporaneous Affidavit dated 23.09.2016 executed by the Director of IPCL, Mr. Asok Kr. Goswami assumes significance and materially militates against the subsequent plea of fraud, coercion or involuntary execution now sought to be raised by the Corporate Debtor.

118) Except making bald and general averments, the Corporate Debtor has failed to place any material on record to establish any act of fraud, coercion or undue influence exercised by the Financial Creditor or the Consortium Lenders. Except asserting that SBI and the Consortium Lenders relied upon a legal opinion regarding Regulation 5.13.2 of the WBERC Regulations, the Corporate Debtor has neither identified any specific false representation nor disclosed the manner in which it was allegedly deceived into executing the Corporate Guarantee. No particulars have been furnished regarding any threat, unlawful pressure, domination of will, concealment of material facts, or deliberate deception so as to constitute fraud, coercion or undue influence within the meaning of Sections 15, 16 and 17 of the Indian Contract Act, 1872.

119) The subsequent conduct of IPCL is also inconsistent with the plea now sought to be raised. Having admittedly executed the Corporate Guarantee, furnished the aforesaid Affidavit, and acted upon the transaction for a considerable period, IPCL cannot now selectively retain the benefits arising from the restructuring arrangement while repudiating the corresponding obligations voluntarily undertaken thereunder.

120) The observations made by the Hon'ble Calcutta High Court in its Order dated 16.05.2023 passed in FMA No. 1370 of 2022, arising out of the Interim Order dated 09.09.2022 passed in Money Suit No. 01 of 2022, concerning the very same Deed of Corporate Guarantee and substantially similar allegations of fraud and inducement, also lend support to the conclusion that the transaction in question was a conscious and negotiated commercial arrangement voluntarily entered into by the parties with full awareness of their commercial interests, rights and obligations, and not a

transaction brought about by coercion, fraud or undue influence. The relevant observations are reproduced below:

> "It is no doubt true that the fraud unravels all the solemn act and, therefore, is always viewed seriously when it is alleged in course of the proceedings. The person who alleges the fraud to have been committed by the other side must plead particulars of such fraud under the rule of pleading and procedures. Mere using the word 'fraud' without any specification or particulars shown in the pleading may not be sufficient. The fraud has to be discerned in the transaction and the stand of the parties and the conduct in relation thereto. It cannot be applied adjunctly nor in abstract manner. Two corporate entities who are well equipped to understand their commercial interests, entered into a transaction, the allegation as to fraud has to be understood keeping in mind the above aspect. It is quite improbable that the appellant no. 1 who acquired the majority shares in MEL at USD 1 is induced to give a corporate guarantee".

121) In view of the aforesaid facts and circumstances, we are unable to accept the contention of the Corporate Debtor that the Deed of Corporate Guarantee dated 23.09.2016 was obtained by fraud, coercion, misrepresentation or undue influence. Accordingly, we hold that the said Deed of Corporate Guarantee was consciously and voluntarily executed by IPCL with full knowledge of the terms and consequences thereof and that no case of fraud, coercion or undue influence has been made out by the Corporate Debtor. The defence raised by the Corporate Debtor appears to be a belated attempt to avoid obligations consciously and voluntarily undertaken under the restructuring arrangement.

B. Enforceability of the Deed of Corporate Guarantee

122) The Corporate Debtor/IPCL has questioned the enforceability of the Deed of Corporate Guarantee dated 23.09.2016 on the ground that the same is hit

by Section 23 of the Indian Contract Act, 1872, on the premise that the guarantee was allegedly issued without obtaining prior approval of the WBERC as purportedly required under Regulation 5.13.2 of the WBERC Regulations, 2004 framed under the Electricity Act, 2003. In substance, the contention of the Corporate Debtor is that, even assuming the guarantee was executed, the same would nevertheless be unenforceable on account of being allegedly unlawful.

123) Before examining the aforesaid contention, it would be apposite to refer to Section 23 of the Indian Contract Act, 1872 and Regulation 5.13.2 of the WBERC Regulations. Section 23 reads as follows:

> *23. What consideration and objects are lawful, and what not—*
> *The consideration or object of an agreement is lawful, unless—*
> *it is forbidden by law; or*
> *is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or*
> *involves or implies, injury to the person or property of another; or*
> *the Court regards it as immoral, or opposed to public policy.*
> *In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.*

124) Regulation 5.13.2 of the WBERC Regulations requires prior written consent of the Commission before issuance of guarantees beyond the normal course of business activities of the licensee. The said Regulation reads as under:

> *a. Prior consent for certain actions.*
>
> *5.13.1 The licensee shall obtain prior written consent from the Commission, if it undertakes the following activities as mentioned from regulation 5.13.2 to 5.13.5 which are in addition to the other activities for which the licensee is required to*

obtain the prior approval of the Commission in terms of the provisions of the Act/Regulations made by the Commission thereunder and/or terms and conditions of the licensee.

5.13.2 The licensee shall obtain prior written consent from the Commission in making any loans to, or issuing any guarantee for any obligation of any person which is beyond the normal area of business activities of the licensee in respect of its core activities. Loan to the employees pursuant to the terms of services and advances to the suppliers etc. in the ordinary course of business are excluded from the requirement to seek such approval. If any affiliates of the licensee undertake any loan for which the licensee's business may be affected directly or indirectly then in such case licensee is required to obtain such written consent from the Commission in a manner as already specified.

5.13.3 In case an affiliate is to provide any goods or services to the licensee in connection with its normal core activities then prior approval will be required. However, such transaction is required to be done under the following conditions to the satisfaction of the Commission.

(a)The transaction is on an arms-length basis;
(b)The price and quality of the goods are reasonably determined keeping in view the market conditions; and
(c) The normal business requirement of the licensee.

Notwithstanding anything contained contrary here in above under this clause, nothing will be applicable if the purchase has been made through normal open competitive bidding in a transparent manner.

Provided in such bidding, there shall be at least two bidders in whose business none of the board members of the licensee or owner of the licence has any business interest. In case of non-availability of such bidders, formal approval from the Commission is to be taken through written application along will justification.

5.13.4 The licensee or its affiliates shall obtain prior written consent from the Commission in acquiring a licence or the undertaking of, or acquire controlling interest in the business of transmission, distribution or trading of electricity of any other licensee or persons, where such business or undertaking is situated in the State.

5.13.5 Where such prior permission is required, the licensee shall file a suitable application to the Commission disclosing relevant facts on that behalf. The Commission shall within 30 days of the filing of application allow the arrangement subject to such terms and conditions as is considered appropriate or reject the same for reasons recorded in writing in support of the order.

125) The contention of the Corporate Debtor is that being a distribution licensee governed by the Electricity Act, 2003 and the Regulations framed thereunder, IPCL could not have undertaken financial obligations such as issuance of a Corporate Guarantee without prior written consent of WBERC. According to the Corporate Debtor, the absence of such approval renders the Deed of Corporate Guarantee unlawful and void under Section 23 of the Indian Contract Act, 1872. Further, according to the Corporate Debtor, the Guarantee Deed creates a distinction between 'regulated assets' and 'non-regulated assets', though no such distinction is expressly recognised under the Electricity Act, 2003 or the WBERC Regulations, and therefore the Guarantee Deed is also alleged to be impermissible on that count.

126) Per contra, it is submitted by Learned Counsel for the Financial Creditor that there is no prohibition in law against issuance of a guarantee in relation to non-regulated assets and, in any event, any alleged violation of the WBERC Regulations would not by itself render the contract void or unenforceable.

127) In order to appreciate the said contentions, it is also necessary to examine the relevant terms of the Deed of Corporate Guarantee dated 23.09.2016 (**Exhibit-6**). Clause 2 of the Guarantee Deed show that the Guarantor undertook to discharge the guaranteed obligations from "Non-Regulated Assets", and only surplus amounts remaining after discharge of obligations pertaining to the regulated business were contemplated to be utilised for meeting the guaranteed obligations. Clause of the Guarantee Deed is:

> 2. **GUARANTEE**
>
> *2.1 The Guarantor, hereby irrevocably, absolutely and unconditionally guarantees to the Phase Security Trustee for the benefit of the Phase I Lenders that the Borrower and/or the Guarantor shall duly and punctually pay/repay the Guaranteed Obligations stipulated in or payable in accordance with the terms and conditions contained in the Existing Common Loan Agreement and the other Finance Documents and on the failure of the Borrower to pay the Guaranteed Obligations (or any part thereof) in accordance with the terms and conditions contained in the Existing Common Loan Agreement (or any part thereof) or upon the occurrence of an Event of Default, the Guarantor shall forthwith pay, from the Non Regulated Asset, to the Phase I Lenders, without demur or protest or without the right of any set off, deductions or adjustments of any kind whatsoever, the amount of the Guaranteed Obligations as may be claimed by the Phase I Lenders in relation to the Phase I Facility, as stated in the Demand Certificate to be issued by the Phase I Lenders/ Phase I Security Trustee.*
>
> *2.2 The Guarantor, hereby irrevocably, absolutely and unconditionally undertakes to utilize all Surplus Amounts towards meeting any shortfall in debt servicing in relation to the Phase 1 Project. Any such shortfall to be funded by the Guarantor shall be as may be claimed by the Phase I Lenders I in relation to the Phase I Facility, as stated in the Demand Certificate to be issued by the Phase I Lenders/Phase I Security Trustee.*

2.3 The Guarantor irrevocably, absolutely and unconditionally guarantees that it shall, forthwith pay to the Phase I Security Trustee, without demur or protest or without the right of any set off and/or deductions and/or adjustments of any kind whatsoever, the amount of the Guaranteed Obligations as may be claimed by the Phase I Security Trustee (on behalf of the Phase I Lenders) in relation to the Phase I Facility, as stated in the Demand Certificate. The Phase I Security Trustee shall be entitled to make multiple demands under this Guarantee.

2.7 In order to perform its obligations under Clause 2.1 above, the Guarantor shall utilize the Non-Regulated Asset. In order to perform its obligations under Clause 2.2 above, the Guarantor shall utilize the Surplus Amounts.

128) Thus, a reading of Clause 2 of the Guarantee Deed makes it clear that, upon default, the guarantor was obligated to discharge the guaranteed obligations primarily from "Non-Regulated Assets". Even insofar as "Surplus Amounts" generated from regulated business are concerned, the same become available only after meeting statutory dues, operational expenses, capital expenditure and debt servicing obligations pertaining to the licensed business.

129) The expressions "Regulated Asset", "Non-Regulated Asset" and "Surplus Amounts" have been defined in the Deed of Corporate Guarantee as follows:

> ***Regulated Asset*** *shall mean all the revenues and receivables of business and operations of the Dishergarh Electric License.*
>
> ***Non-Regulated Asset*** *shall mean all assets of the Guarantor other than the Regulated Asset.*
>
> ***Dishergarh Electric License*** *shall mean the license granted for supply of energy by the Government of Bengal on December 19, 1932 pursuant to Notification No. 7423 Com and on September 19, 1934 pursuant to the Notification No. 6578 Com.*

> ***Surplus Amounts*** *shall mean the surplus funds generated from the Regulated Asset after meeting the requirements of the Dishergarh Electric License towards payment of statutory dues, capital expenditure, operating costs and debt servicing payments in relation to the Regulated Asset, and is determined in accordance with the Dishergarh Electric License.*

130) A conjoint reading of Clauses 2, 7, 12, 17 and 18 of the Guarantee Deed along with the Affidavit dated 23.09.2016 (**Annexure R-2**) sworn by Mr. Asok Kumar Goswami, Director of IPCL, clearly demonstrates that IPCL was conscious of the distinction sought to be maintained under the contractual structure between assets pertaining to its regulated licensed business and other assets of the Company. Although the expressions "Regulated Asset" and "Non-Regulated Asset" are contractual expressions defined under the Guarantee Deed and are not expressions employed under the Electricity Act, 2003 or the WBERC Regulations, the material on record indicates that the parties consciously structured the transaction in a manner intended to ensure that obligations under the guarantee would not directly encumber the regulated licensed business of IPCL. Significantly, contemporaneously with the execution of the Corporate Guarantee, IPCL had also executed the Indemnity Agreement dated 23.09.2016 (**Annexure R-24**) as part of the same financing and restructuring framework, thereby further evidencing its conscious participation in the overall commercial arrangement and assumption of interconnected financial obligations. Further, IPCL expressly represented that execution of the Guarantee Deed did not contravene any Law or Regulation, as is evident from Clause 7(v) of the Guarantee Deed and the Affidavit (**Annexure R-2**), and also undertook to obtain requisite approvals, if any, from WBERC in terms of Clause 18(i). Moreover, the obligation to obtain prior approval under Regulation 5.13.2, if attracted, was cast upon the licensee itself under the statutory framework.

131) The subsequent conduct of IPCL before WBERC is also of considerable significance. The material placed on record reflects that IPCL itself approached WBERC by applications dated 17.08.2017 (Case No. OA-260/17-18) for issuing Corporate Guarantee to funding agencies from time to time for business acquisition activities beyond the area of its distribution license and 15.05.2018 (OA-274/18-19) to issue Corporate Guarantee to the tune of Rs. 3345 crores to the lenders of MEL, a subsidiary of IPCL having generation activities outside the normal area of its distribution license. The first application was rejected vide Order dated 09.11.2017 (**Annexure-8**) and in the second application, the WBERC vide Order dated 07.08.2018 (**Annexure-13)** held that financials of IPCL do not accommodate to extend a Corporate Guarantee to the lenders of MEL as prayed for against Loan attributable to a project beyond the distribution license area of IPCL under WBERC, which may attract a charge on the assets of IPCL used for supplying power to the consumers of electricity in the State of West Bengal.

132) It is significant to note that in neither of the aforesaid applications did IPCL disclose that the Corporate Guarantee dated 23.09.2016 had already been executed in favour of the Consortium Lenders of MEL. It was only subsequently, on 26.10.2021 (**Annexure-14**), after enforcement actions had commenced, that IPCL approached WBERC seeking clarification as to whether prior consent under Regulation 5.13.2 was required before execution of the Corporate Guarantee dated 23.09.2016. The material on record further indicates that WBERC issued a show cause notice to IPCL as to why action should not be taken for execution of the Guarantee without prior approval of the Commission. Importantly, even at that stage, the issue was treated by WBERC as one involving regulatory compliance and possible regulatory action, and not as rendering the Corporate Guarantee

void ab initio. This sequence of events materially undermines the contention that the Guarantee Deed was void from inception and instead indicates that IPCL itself treated the issue as one capable of being addressed within the regulatory framework.

133) It is therefore evident that the Guarantee Deed was consciously structured in a manner whereby obligations under the Guarantee were intended to be discharged primarily from non-regulated assets, while the regulated licensed business and assets of IPCL were intended to remain insulated and protected. The question, therefore, is not merely whether prior approval under Regulation 5.13.2 was required, but whether the statutory scheme of the Electricity Act, 2003 and the WBERC Regulations treats absence of such approval as rendering the underlying transaction void and unenforceable.

134) Section 17 of the Electricity Act, 2003 prohibits assignment or transfer of utility or licence without prior approval of the Appropriate Commission and sub-section (4) thereof provides that Agreements relating to such transactions, if entered into without approval, shall be void.

> *Section 17. (Licensee not to do certain things):*
>
> *(1) No licensee shall, without prior approval of the Appropriate Commission, -*
>
> *(a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee; or*
>
> *(b) merge his utility with the utility of any other licensee:*
>
> *Provided that nothing contained in this sub-section shall apply if the utility of the licensee is situate in a State other than the State in which the utility referred to in clause (a) or clause (b) is situate.*

(2) Every licensee shall, before obtaining the approval under sub-section (1), give not less than one month's notice to every other licensee who transmits or distributes, electricity in the area of such licensee who applies for such approval.

(3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.

(4) Any agreement, relating to any transaction specified in sub-section (1) or sub section (3), unless made with the prior approval of the Appropriate Commission, shall be void.

135) Section 51 permits a distribution licensee to engage in other business activities subject to prior intimation to the Appropriate Commission and maintenance of separate accounts to ensure that distribution assets are not encumbered.

A distribution licensee may, with prior intimation to the Appropriate Commission, engage in any other business for optimum utilisation of its assets: Provided that a proportion of the revenues derived from such business shall, as may be specified by the concerned State Commission, be utilised for reducing its charges for wheeling:

Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidises in any way such business undertaking nor encumbers its distribution assets in any way to support such business:

Provided also that nothing contained in this section shall apply to a local authority engaged, before the commencement of this Act, in the business of distribution of electricity provisions with respect to electricity traders.

136) A plain reading of Section 17(4) shows that the statute expressly declares void only those agreements relating to transactions contemplated under Sections 17(1) and 17(3), namely acquisition of utility, merger of utility, assignment of licence or transfer of utility or any part thereof without prior approval of the Appropriate Commission. However, the licensee is allowed to do any other business under Section 51 with prior intimation to the Appropriate Commission. This position is also consistent with Regulation 5.13.2 of the WBERC Regulations, which contemplates issuance of guarantees beyond the normal licensed business subject to prior approval of the Commission. The Order dated 07.08.2018 (**Annexure-13**) of WBERC also indicates that the Commission did not treat such activity as inherently impermissible, but examined the same from the standpoint of financial and regulatory impact.

137) In the present case, the Deed of Corporate Guarantee does not involve transfer of utility, assignment of licence, merger or acquisition of utility. It is essentially a financial arrangement executed to secure obligations of the principal borrower. Therefore, the transaction does not fall within the ambit of Sections 17(1) or 17(3) so as to attract the consequence of voidness under Section 17(4).

138) Insofar as Regulation 5.13.2 is concerned, the same undoubtedly requires prior written consent of the Commission before issuance of guarantees beyond the normal course of business. However, neither the Electricity Act, 2003 nor the WBERC Regulations provide that a Guarantee executed without such approval shall be void or unenforceable.

139) Regulation 5.19 of the WBERC Regulations specifically provides consequences for contravention in the nature of Regulatory action, penalty, prosecution, revocation or amendment of licence and other measures under the Act. Likewise, Sections 142 and 146 of the Electricity Act provide penalties and punishment for non-compliance of directions, regulations or orders issued under the Act. Regulation 5.19 of the WBERC Regulations is as below:

> 5.19 Penalty for Contravention:
>
> *5.19.1 The licensee shall be liable for action under the provisions of the Act, Rules, Regulations, Codes, Standards and Condition of licence in appropriate cases for contravening any one or more of the provisions of the licence including but not limiting to investigation, penalty, prosecution, revocation of licence, amendment of licence, appointment of administrator, sales of assets and or any other measure in accordance with the provisions of the Act, Rules, Regulations, Codes, Standards, etc. as the Commission may deem fit.*

140) The statutory framework, therefore, indicates that breach of Regulation 5.13.2 attracts Regulatory consequences and not automatic invalidation of the underlying transaction itself. Had the legislature intended that every guarantee issued without prior approval should be void ab initio, such consequence would have been expressly provided, as has been done under Section 17(4) in relation to transfer or assignment of utility/licence.

141) Learned Senior Counsel for the Corporate Debtor placed reliance upon the judgment of the Hon'ble Supreme Court in ***Mannalal Khetan v. Kedar Nath Khetan*, *(1977)2 SCC 424***, wherein it was held that where a statute expressly prohibits an act, or where the object of the contract defeats the provisions of

law, such agreement would be void. The Hon'ble Supreme Court observed as under:

> 19. It is well established that a contract which involves in its fulfilment the doing of an act prohibited by statute is void. The legal maxim A pactis privatorum publico juri non derogatur means that private agreements cannot alter the general law. Where a contract, express or implied, is expressly or by implication forbidden by statute, no court can lend its assistance to give it effect, (See Mellis v. Shirley L.B.). What is done in contravention of the provisions of an Act of the Legislature cannot be made the subject of an action.
>
> 20. If anything is against law though it is not prohibited in the statute but only a penalty is annexed the agreement is void. In every case where a statute inflicts a penalty for doing an act, though the act be not prohibited, yet the thing is unlawful, because it is not intended that a statute would inflict a penalty for a lawful act.
>
> 21. Penalties are imposed by statute for two distinct purposes (1) for the protection of; the public against fraud, or for some other object of public policy (2) for the purpose of securing certain sources of revenue either to the state or to certain public bodies. If it is dearth it a penalty is imposed by statute for the purpose of preventing something from being, done in some ground of public policy, the thing prohibited, if done, will be treated as void, even though the penalty is imposed is not enforceable.
>
> 22. The provisions contained in Section 108 of the Act are for the reasons indicated earlier mandatory. The High Court erred in holding that the provisions are directory.

142) The aforesaid proposition is well settled. However, it is equally well settled that the question whether breach of a statutory provision renders a contract void depends upon the Scheme, object and consequence contemplated under the statute. In ***Mohan Singh v. International Airport Authority of India*, *(1997) 9 SCC 132***, the Hon'ble Supreme Court held that the distinction between mandatory and directory provisions depends upon the language,

object and purpose of the statute and that where the statute itself provides a particular consequence for non-compliance, Courts must ascertain the legislative intent before implying any further consequence of invalidity. It was observed:

> 17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word 'shall' or 'may' depends on conferment of power. In the present context, 'may' does not always mean may. May is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes duty to exercise. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty. In Craies on Statute Law (7th Edn.), it is stated that the court will, as a general rule, presume that the appropriate remedy by common law or mandamus for action was intended to apply. General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is mandatory. The scope and language of the statute and consideration of policy at times may, however, create exception showing that the legislature did not intend a remedy (generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. therefore, it is necessary to ascertain the intention. The word 'shall' is not always decisive. Regard must be had to the context, subject-matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration….

143) Therefore, while determining whether a contract is void under Section 23 of the Indian Contract Act on account of violation of a statutory provision, the Court is required to examine: (i) whether the statute expressly or impliedly forbids the transaction; (ii) whether the statute declares such transaction void or unenforceable; and (iii) whether enforcement of the transaction would defeat the object or provisions of the statute. The answer to these questions depends upon the scheme, purpose and consequences contemplated under the concerned statute.

144) Mere regulatory non-compliance or breach of a statutory condition does not ipso facto render a contract void under Section 23 unless the statute expressly or by necessary implication forbids the transaction itself or indicates that enforcement thereof would defeat the provisions of law. In the present case, neither the Electricity Act, 2003 nor Regulation 5.13.2 declares that a Corporate Guarantee issued without prior approval shall be void. The statutory consequences contemplated are Regulatory and Penal in nature.

145) The distinction between an act prohibited absolutely by statute and an act requiring prior approval, breach of which attracts only Regulatory consequences, was explained by the Hon'ble Supreme Court in ***BOI Finance Ltd. v. Custodian, (1997) 10 SCC 488***. The Hon'ble Supreme Court held that non-compliance with directions issued by the Reserve Bank of India may expose the concerned party to prosecution or penalty, but would not by itself invalidate transactions entered into with third parties unless the statute expressly so provides.

> 33. The aforesaid principles will clearly be applicable in the present case as well. The non-compliance of the directions issued by the Reserve Bank may result in prosecution/or levy of penalty Under Section 46, but it cannot result in invalidation of any contract by the bank with the third party. If the contention of the Custodian

is accepted it will result in invalidation of agreements by the banks, even where the third parties may not be aware of the directions which are being violated. To give an example, if the Reserve Bank by confidential circulars fixes the limit in excess of which the banks cannot give any loan but without informing the third party, the bank while exceeding its limit gives a loan which is then utilised by the bank's customer, it will be inequitable and improper to hold that as the directions of the Reserve Bank had not been complied with by the bank, the grant of loan cannot be regarded as valid and, as a consequence thereof, the customer must return the amount received even though he may have utilised the same in his business. Yet another instance may be where the bank advances loan by charging interest at a rate lower than the minimum which may have been fixed by the Reserve Bank, in a direction issued Under Section 36(1)(a), As far as the customer is concerned, it may not be aware of the direction fixing the minimum rate of interest. Can it be said, in such a case, that the advance of loan itself was illegal or that the bank would be entitled to receive the higher rate of interest? In our opinion, it will be wholly unjust and inequitable to hold that such transactions entered into by the bank with a customer, which transactions are otherwise not invalid, can be regarded as void because the bank did not follow the directions or instructions issued by the Reserve Bank of India.

34. The instructions which were issued by the said circulars were meant to be complied with by the banking companies only and did not purport to, nor could they, be binding on the third parties. This being so, even if the Appellant banks had been prohibited from entering into the buy-back arrangements in question, that, by itself, would not invalidate the contracts though the infringement of the said directions may lead to action being taken Under Section 46 of the Act.

146) The aforesaid principle squarely applies to the facts of the present case. Regulation 5.13.2 is a Regulatory provision intended to ensure oversight by the Commission over activities which may affect the functioning of the licensee. Non-compliance therewith may invite action under the Regulatory

framework, but does not render the underlying commercial transaction void in the absence of an express statutory declaration to that effect.

147) Significantly, the scope and effect of Regulation 5.13.2 came to be considered by the Hon'ble Calcutta High Court in proceedings arising out of Money Suit No. 1 of 2022 and F.M.A. 1370 of 2022, wherein the contention that a Corporate Guarantee issued without prior approval is per se void ab initio was expressly rejected. The Hon'ble High Court drew a distinction between (i) statutory provisions imposing an absolute prohibition rendering an act void, and (ii) provisions requiring prior consent, the breach of which entails regulatory consequences such as penalty or prosecution. It was held that non-compliance with such regulatory requirements does not ipso facto render the contract void or unenforceable vis-à-vis third parties. The matter came up in appeal filed by IPCL against the Order dated 09.09.2022 (**Annexure-1 in IA No. 1046 of 2022**) passed by the Commercial Court, Alipore. It was held:

> It is manifest from the above quoted provision (Regulation 5.13.2) that the distribution of the licensee company is bound by the provisions contained under the said regulation which postulates that in making any loans or issuing any guarantee for any obligation beyond the normal area of business activities of the licensee in respect of its core activities is permissible after obtaining a prior written consent from the commission. The exception is also created therein relatable to the loans to the employees provided in the terms of the employment and services. A further mandate can be seen in the language used therein that in the event of any affiliates of the licensee undertake any loan which may affect directly or indirectly, its business then in such event the prior consent in writing from the commission is required. The appellant contends that in view of the embargo created under the aforesaid provision any guarantee given by the licensee or distribution company, be it corporate or otherwise, is per se *null and void ab initio* and does not create

any enforceable right into a person in whose favour such guarantee was given. A distinction was sought to be made between a prohibition and restrictions attracting penalty without any consequence to follow otherwise. In case of an absolute prohibition the things done in derogation thereof may entail the act or the thing illegal and void. However, the situation would be different when the prohibition is not absolute but requires a prior consent in writing and the consequence by way of penalty is provided. ***The affidavit and the corporate guarantee if read harmoniously is explicit to the extent that the Appellant no. 1 was conscious of such embargo having created and represented that a distinction in this regard is manifestly seen in the sense that there is no fetter in giving a corporate guarantee on a non-regulated asset as it has no impact on its business to be affected directly or indirectly***. In fact, there was no attempt made by the appellants unless it senses that lenders may invoke corporate guarantee because of the default having committed by the MEL.

The contents of the deed of guarantee dated 29th September, 2016 may be looked into in order to ascertain the stand of the appellant no. 1 in relation to the requirement under the aforesaid regulation. The non-regulated asset is defined to mean all assets of guarantor other than the regulated assets in the deed of guarantee. Clause 2 thereof indicates that the guarantor furnished the said guarantee irrevocably, absolutely and unconditionally to the phase I security trustees for the benefit of the phase I lenders with clear stipulation that the guarantor shall forthwith pay from non-regulated assets to Phase I lenders without demur or protest or without the right of any Set of deductions or adjustment of any kind whatsoever. Even Clause 27 makes the obligation clearer that in order to perform the obligation of guarantee the non-regulated asset shall be utilized. Clause 12 of the deed of guarantee which contained the broad head "liability not affected" manifestly indicate that it would not be so affected by any illegality, invalidity, irregularity or unenforceability of all or any part of the guarantee obligations. The appellant no. 1 further made representation and gave warrantees under Clause 7 of the deed of guarantee that there are no contravention of the regulations or the laws in the following:

> "(V) No Contravention: The execution, delivery and performance of this Guarantee and all instruments and agreements required hereunder do not and would not contravene, violate or constitute a default under (a) any applicable law; (b) any provision of any constitution document of the Guarantor (c) any corporate authorisations of the Guarantor (d) any provision of any agreement or other instrument to which the Guarantor is a party by which the Guarantor or any of its assets is or may be bound; (e) any treaty, law or regulation applicable to the Guarantor; or (f) any judgement, injunction, order or decree binding upon the Guarantor or any of its assets."
>
> **In view of the law explained hereinabove more non-compliance of the requirement under the statutory provisions attracting prosecution or levy of penalty does not render the contract void or invalid in relation to a thirty party.** Thus, the stand of the appellant that the entire contract is vitiated having rendered null or void ab initio, is not acceptable. ***Furthermore, in view of the specific stand taken by the appellant that the corporate guarantee in relation to non-regulated assets are beyond the mischief of the said regulation is essentially a fact to be decided in the suit itself based upon the evidence to be adduced by the parties in this regard.***
>
> (own emphasis)

148) This Adjudicating Authority is in respectful agreement with the aforesaid reasoning. Regulation 5.13.2 cannot be construed as an absolute statutory prohibition rendering every Guarantee executed without prior approval void under Section 23 of the Indian Contract Act.

149) It is also relevant to note that the Corporate Debtor had raised similar contentions in earlier proceedings including COS No. 266 of 2017, which came to be withdrawn without liberty to institute fresh proceedings. No competent judicial forum has declared the Deed of Corporate Guarantee

void or unenforceable on the ground now urged before this Adjudicating Authority.

150) On the contrary, the conduct of IPCL demonstrates repeated acknowledgment of the execution and subsistence of the interconnected transaction documents, including the Corporate Guarantee and Indemnity Agreement, both of which formed integral parts of the overall financing structure. Even the subsequent applications made before WBERC proceeded on the basis of the existence of the Corporate Guarantee and sought approval/clarification in relation thereto, rather than treating the transaction as void ab initio or non est. IPCL having represented in Clause 7(v) of the Guarantee Deed that execution thereof did not contravene any Law or Regulation, and having further undertaken to obtain requisite approvals, if any, cannot subsequently avoid liability by relying upon its own alleged non-compliance. A party cannot be permitted to take advantage of its own wrong.

151) In the facts of the present case, the object or consideration of the Guarantee Deed cannot be said to be "forbidden by law" nor can enforcement thereof be said to "defeat the provisions" of the Electricity Act, 2003 or the WBERC Regulations within the meaning of Section 23 of the Indian Contract Act, 1872. Neither the Electricity Act nor the WBERC Regulations expressly or by necessary implication declare that a Corporate Guarantee issued without prior approval under Regulation 5.13.2 shall be void or unenforceable. At the highest, the alleged non-compliance may expose the licensee to Regulatory consequences. However, such Regulatory non-compliance does not render the underlying contract void inter se the contracting parties.

152) It is also relevant to note that the present transaction is a commercial arrangement entered into between sophisticated parties with full knowledge of the contractual and Regulatory framework. In the absence of an express statutory declaration rendering such transaction void, Section 23 of the Indian Contract Act cannot be expansively interpreted so as to invalidate commercial obligations voluntarily undertaken between the parties.

153) In view of the aforesaid discussion, this Adjudicating Authority is of the considered view that the Deed of Corporate Guarantee dated 23.09.2016 is not rendered void or unenforceable under Section 23 of the Indian Contract Act merely on account of alleged absence of prior approval under Regulation 5.13.2 of the WBERC Regulations. The contention of the Corporate Debtor/IPCL on this issue is, therefore, rejected.

C. Effect of Prior Proceedings and Conduct of IPCL

154) As already discussed above, several proceedings came to be initiated at the instance of IPCL and/or its subsidiary MEL subsequent to execution of the Deed of Corporate Guarantee dated 23.09.2016 (**Exhibit-6**) and particularly after the occurrence of default by MEL on 31.07.2017. The commercial background and transaction structure pursuant to which the said Guarantee Deed came to be executed have already been noticed in detail hereinabove. The material on record indicates that the execution of the Deed of Corporate Guarantee formed part of a consciously negotiated commercial arrangement entered into between the parties in the course of restructuring and change in control of MEL. The obligations arising therefrom were thus undertaken by commercially sophisticated entities fully aware of their respective rights, liabilities and commercial interests.

155) The proceedings initiated by IPCL and/or MEL before various judicial, Regulatory and Insolvency Fora subsequent to execution of the Deed of Corporate Guarantee dated 23.09.2016, and particularly after occurrence of default by MEL, are summarized hereinbelow:

Forum	**Case No. / Year**	**Approximate date of filing**	**Initiated By**	**Issue Raised**	**Outcome / Status**
Commercial Court, Hyderabad	COS No. 266 of 2017 (Annexures R-6 & 7 and Annexure-15)	26.12.2017	MEL & IPCL	Challenge to invocation of pledge and validity of Deed of Guarantee	Withdrawn on 02.04.2019 **without liberty**
Commercial Court, Alipore	Money Suit 01 of 2022		IPCL	Challenge to invocation of pledge and validity of Deed of Guarantee	
High Court, Andhra Pradesh	W.P. No. 26999 of 2018 (Annexure R-10)	31.07.2018	IPCL	Challenge to lender action for change of management by issuing notice dated 28.07.2018 etc.	Withdrawn on 15.02.2019
High Court (Hyderabad)	W.P. No. 26977 of 2018 (Annexure R-12)	31.07.2018	IPCL	Challenge to transfer of pledged shares without valuation	Similar issues raised; no final relief
High Court (Hyderabad)	W.P. No. 30048 of 2018 (Annexure R-13 &14)	21.08.2018	MEL	Challenge the actions of lenders of utilizing funds in the TRA post invocation of pledge and allow MEL to sue funds and further restraining taking coercive steps.	Interim relief (24.08.2018) vacated (23.01.2019); Writ Appeal dismissed (17.04.2019)
High Court (Hyderabad)	Writ Appeal No. 203 of 2019		MEL	Against vacation of interim order	Dismissed on 17.04.2019
NCLT	CP (IB) No. 184/7/HDB/2019		SBI	CIRP against MEL	Admitted on 07.11.2019
NCLAT	Company Appeal (AT) Nos. 1220 & 1450 of 2019		IPCL & Director	Challenged admission Order dated 07.11.2019 against MEL in CP (IB) No. 184/7/HDB/2019	Dismissed on 10.09.2020

Supreme Court	Civil Appeal Nos. 3307 & 3309 of 2020 (Annexure R-15 &16)	28.09.2020	IPCL	Challenge to NCLAT Order dated 10.09.2020	Withdrawn on 20.05.2020
NCLT	I.A. No. 648 of 2021 in CP 184 (Annexure R-20 & R-21)	27.09.2021	IPCL	Admission-related contentions	Admissions made regarding liability
NCLT / NCLAT	Various IAs (586, 567 etc.)		IPCL/ MEL	Interlocutory challenges	No substantive relief
NCLT	CP No. 660/241/HDB/2018		IPCL/ MEL	Management/shareholding disputes	Part of parallel litigation
NCLT, Delhi	Transfer Application No. 81 of 2021 for transfer of CP No. 205 (Annexure R-22)	14.12.2021	IPCL	For transfer of Petition to Calcutta or from Bench-1 to Bench-II.	IPCL counsel gave statement that he will not hinder delay the disposal of case and then the petition was disposed of on 22.04.2022 (Annexures R-22)
WBERC	WBERC/OA-260/17-18 Application		IPCL	Approval for corporate guarantee beyond the regulated area.	Rejected (09.11.2017)
WBERC	WBERC/OA-274/18-19 Application (Annexure R-18)	15.05.2018	IPCL	Fresh approval attempt	Rejected (07.08.2018-Annexure-13)
WBERC	WBERC/OA-382/21-22 Application (Annexure-14)	26.10.2021	IPCL	Seeking Clarification about prior consent before execution of Guarantee	Show cause issued Annexure R-19 (22.12.2021)
Civil Court Alipore	Money Suit No. 01 of 2022		IPCL/MEL	validity of guarantee deed, enforceability of Reg 5.13.2 etc.	Pending

156) A perusal of the aforesaid litigation history reveals a continuous and overlapping course of litigation initiated by IPCL and/or MEL before multiple Fora including Civil Courts, High Courts, WBERC, NCLT, NCLAT and the Hon'ble Supreme Court, all arising out of the same underlying restructuring transaction, lender enforcement measures and obligations

flowing from the Deed of Corporate Guarantee dated 23.09.2016. Though the precise reliefs varied from proceeding to proceeding, the foundational grievance consistently related to enforcement of rights arising out of the same transaction structure, including invocation of pledge, transfer of pledged shares, lender enforcement actions, utilization of TRA funds, change in management, CIRP proceedings and the validity or enforceability of the Guarantee Deed. The record further reflects that in several proceedings interim protection was sought and, upon vacating of interim orders or failure to secure substantive relief, fresh proceedings came to be instituted before other Fora raising connected or overlapping grievances. Even before WBERC, instead of assailing the earlier rejection orders, IPCL filed successive applications seeking approval and thereafter clarification. The cumulative pattern of conduct cannot be viewed in isolation and assumes significance while appreciating the objections presently sought to be raised before this Adjudicating Authority.

157) The aforesaid proceedings assume considerable significance for another reason. At no contemporaneous stage did IPCL treat the Deed of Corporate Guarantee as non-est or void ab initio. On the contrary, the execution and subsistence of the Guarantee Deed stood repeatedly acknowledged by IPCL in judicial proceedings, regulatory filings and contractual representations. Even the challenge founded upon Regulation 5.13.2 of the WBERC Regulations emerged only after default by MEL and commencement of enforcement measures by the lenders. Significantly, the subsequent applications filed before WBERC proceeded on the premise that the Corporate Guarantee existed and required clarification within the Regulatory framework, rather than asserting that the instrument itself was void in Law from inception. This conduct is wholly inconsistent with the present stand that the Guarantee Deed was unenforceable ab initio.

158) In our considered view, the cumulative effect of the aforesaid conduct reflects repeated attempts to resist or reopen enforcement measures arising from the same commercial arrangement through proceedings instituted before different Fora. The multiplicity of proceedings, often initiated after withdrawal, dismissal or failure of earlier proceedings, demonstrates continued re-agitation of interconnected disputes under varying legal formulations. It is also significant that despite prolonged litigation across multiple Fora over several years, no competent Judicial or Regulatory Forum has declared the Deed of Corporate Guarantee dated 23.09.2016 to be void, illegal or unenforceable.

159) In COS No. 266 of 2017 filed on 26.12.2017 by MEL and IPCL against SBI and other lenders before the Court of XXIV Additional Chief Judge-cum-Commercial Court, City Civil Court, Hyderabad, MEL and IPCL had specifically challenged the validity of the Deed of Corporate Guarantee dated 23.09.2016, inter alia, on the ground of alleged contravention of Regulation 5.13.2 of the WBERC Regulations. The reliefs sought therein included a declaration that the Deed of Guarantee dated 23.09.2016 was illegal, arbitrary, null and void, along with consequential reliefs restraining invocation and enforcement thereof. They sought the following reliefs as set out in the Plaint (**Annexure–R6**):

i) *A Decree of declaration that the Deed of Guarantee dated 23.09.2016 executed by the Plaintiff No. 2 as illegal, arbitrary, null and void.*

ii) *A Decree of declaration that the letters issued by the Defendant dated 20.12.2017, threatening the Invocation and enforcement of the Pledge Agreement dated 23.09.2016 and the Deed of Guarantee dated 23.09.2016 for non-payment of demand amount of Rs.93,57,91,585.30 without following the procedure and without taking steps for transferring that amount from Trust and*

Retention Account of the 1st Plaintiff bearing Account No. 36049000407 held in the branch office of the Defendant No.4 Bank as arbitrary, illegal and opposed to public policy.

iii) Consequently, grant a Decree of permanent injunction restraining the Defendant Nos.1 and 4 from taking any such coercive action against the Plaintiffs so long as there is sufficient outstanding balance in Trust and Retention Account bearing Account No.36049000407 held in the branch Office of the Defendant No.4 Bank.

iv) Consequently, grant a Decree of permanent injunction restraining the Defendants from Invoking/enforcing the Pledge Agreement pursuant to the Notice for Invocation of Pledge dated 20.12.2017 so long as there is sufficient outstanding balance in Trust and Retention Account bearing Account No. 35049000407 held in the branch Office of the Defendant No.4 bank.

v) Consequently, grant a Decree of permanent injunction restraining the Defendants from invoking/enforcing the Dead of Guarantee dated 23.09.2016 so long as there is sufficient outstanding balance in Trust and Retention Account bearing Account No.36049000407 held in the branch Office of the Defendant No. 4 Bank.

160) It is pertinent to note that the said suit, namely COS No. 266 of 2017, came to be withdrawn by MEL and IPCL as "not pressed" in terms of Order dated 02.04.2019 (**Annexure–R7**), without liberty to institute fresh proceedings.

161) It is further noted that IPCL filed Money Suit No. 01 of 2022 (**Annexure R-6**) before the Commercial Court at Alipore, Kolkata, wherein substantially the same grounds as raised in the present proceedings were urged. The issues raised therein, inter alia, included challenge to the validity of the Deed of Corporate Guarantee dated 23.09.2016, invocation of pledge of shares, transfer of 3,81,15,06,509 equity shares to the account of SBICAP Trustee

Company Limited, non-infusion/utilisation of USD 40 million received from Engie, demand notices dated 20.12.2017 and 07.02.2020, valuation of pledged shares, and requirement of consent from the West Bengal Electricity Regulatory Commission under applicable regulations. The said suit also referred to various earlier proceedings, including COS No. 266 of 2017 and W.P. Nos. 26977, 26999, and 30048 of 2018. The reliefs claimed in the Plaint are as below:

1. *Pass a decree of declaration, inter alia in favour of Plaintiff No. 2. and against Defendant Nos. 3-21, declaring that the 'Contract of Guarantee executed by Plaintiff No. 1 Company (IPCL) on 23-09-2016 in favour of Defendant Nos 3-19 (the lenders) and/or Defendant No. 1 (SBICAP), acting as 'Security Trustee and/or as 'agent for the 'Security Agent' for Defendant Nos. 3-19 (the lenders), by virtue of Section 23 of the Contract Act (1872) read with Section 20 of the same Act, is null and void ab initio, as if non est, being contended by West Bengal Electricity Regulatory Commission to be in breach of Regulation 5.13.2 of the West Bengal Electricity Regulatory Commission (Licencing and Conditions of Licence) Regulations, 2013.*

2. *Pass a decree of declaration, holding that the sale and transfer of 381,15,06,509 equity shares of face value of Rs. 10 of, and in, Defendant No. 21 Co (MEL) and owned by Plaintiff No. 1 Company (IPCL), transferred in the records of Defendant No. 2 (Ashika Stock Broking Ltd) to the name of Defendant No. 1 (SBI Caps Trustee Company Ltd) as beneficial owner on 02-05-2018, is for consideration due to Plaintiff No. 1 Company (IPCL) as of 02-05-2018 that is not less than Rs. 4,406.50 crores (precisely, Rs. 4,406,49,45,000), or for such other 'reasonable price' which, in light of Section 9 and Section 10 of The Sale of Goods Act (1930), is deemed appropriate by this Hon'ble Court by fair valuation of the same.*

3. *Pass a decree of mandatory injunction, directing the Defendant No. 1 (SBICAP) to pay the sum arrived at in prayer (2) along with interest at 18% per annum calculated from 02-05-2018 till the date of payment, the interest being calculated*

by compounding it with monthly rests, in terms of RBI Circular No. DHOD. No. Dir. BC. 8/13.03.00/2002-03 issued on July 26, 2002, such amount (including interest calculated up to 31-12-2021) being quantified by the Plaintiffs provisionally at not less than Rs.8,871.50 crores, plus pendente lite interest at the same rate and similarly compounded.

In the alternative to (3) (as per the case of Defendant Nos. 3-19)

4. *Pass a decree of mandatory injunction, directing the Defendant No.1 (SBICAP) to deduct from the consideration deemed appropriate by this Hon'ble Court [in terms of the valuation as of 02-05-2018 of the 381,15,06,509 shares of face value of Rs.10 of, and in, MEL and owned by Plaintiff No.1 Company (IPCL) to be decided by this Hon'ble Court), the outstanding (alleged) liability claimed by Defendant No. 1 (SBICAP) and/or by Defendant No. 3-19 as (allegedly) outstanding from MEL towards Defendant Nos. 3-19 as of 02-05-2018, and to pay the surplus / differential / excess to the Plaintiff No. 1 Company (IPCL) along with interest at 18% per annum calculated from 02-05-2018 till the date of payment, the interest being calculated by compounding it with monthly rests, in terms of RBI Circular No. DBOD. No. Dir. BC. 8/13.03.00/2002-03 issued on July 26, 2002, plus pendente lite interest at the same rate and similarly compounded.*

5. *Issue a decree of declaration, declaring Defendant Nos. 1, 3-19 to be jointly and severally liable to pay to Plaintiff No. 1 Company (IPCL) a sum to be assessed by this Hon'ble Court in the nature of compensatory, punitive and exemplary damages and costs including loss of profit and defamation arising from their various acts of omission and/or commission, which sum has been provisionally estimated by the Plaintiffs to be in the region of Rs.1,270 crores as on date of filing the plaint (as detailed in Para 38 above), along with interest thereupon at 18% per annum calculated from 02-05-2018 till the date of payment, the interest being calculated by compounding it with monthly rests, in terms of RBI Circular No. DBOD. No. Dir. BC. 8/13.03.00 /2002-03 issued on July 26, 2002, plus pendente lite interest at the same rate and similarly compounded.*

6. Issue a decree of declaration, declaring that Clause 20 of the Contract of Guarantee', and Clause 15 of the 'Unattested Share Pledge Agreement', both dated 23-09-2016 (Re: jurisdiction of the courts to be only at Hyderabad and New Delhi, respectively) to stand stripped from the same, and leaving the parties to justify to the appropriate Court of territorial jurisdiction if and when any cause of action arises (or, alternatively, declare that 'New Delhi and "Hyderabad' be read as 'Kolkata', the location of the Registered Office of Plaintiff No. 1).

7. Award realistic and/or actual costs to the Plaintiffs, in line with the dicta of the Hon'ble Supreme Court set out in Salem Advocates Bar Association, Tamil Nadu vs. Union of India (2005 6 SCC 344), by ignoring the taxation/costs Rules set out in the Hon'ble Calcutta High Court Rules, this Hon'ble Court being already empowered to do by the same Rules.

8. And pass such other order or further order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

162) In I.A. No. 02 of 2022 and I.A. No. 24 of 2022 in Money Suit No. 01 of 2022, seeking continuation of interim protection were dismissed by the Commercial Court, Alipore, vide Order dated 09.09.2022, and the Appeal preferred there against being F.M.A. No. 1370 of 2022 also came to be dismissed by the Hon’ble Calcutta High Court on 16.05.2023.

163) It is also significant that even in the proceedings before the Commercial Court at Alipore and the Hon’ble Calcutta High Court, where the validity and enforceability of the Corporate Guarantee with reference to Regulation 5.13.2 of the WBERC Regulations was directly urged, no relief came to be granted on the basis that the Guarantee Deed was void or unenforceable. On the contrary, the Hon’ble Calcutta High Court, while considering the effect of Regulation 5.13.2, observed that non-compliance with the regulatory requirement would not ipso facto invalidate the underlying contract vis-à-

vis third parties. The aforesaid observations assume significance while examining the present challenge to the enforceability of the Deed of Corporate Guarantee before this Adjudicating Authority.

164) In the aforesaid factual background, the issue is not merely whether IPCL can raise a legal contention regarding enforceability of the Guarantee Deed, but whether a party which has consciously executed and acted upon a commercial instrument over several years can, after default and commencement of enforcement actions, continuously reopen substantially the same disputes through successive proceedings before different Fora by adopting inconsistent positions. In our considered view, such conduct directly implicates the principles of finality, consistency and judicial discipline which underlie adjudicatory processes, particularly within the time-bound framework of the Insolvency and Bankruptcy Code, 2016.

165) The material on record clearly demonstrates that IPCL consciously executed the Deed of Corporate Guarantee dated 23.09.2016 as part of a negotiated restructuring and change-in-control arrangement concerning MEL. The transaction was entered into between commercially sophisticated entities with the assistance of legal and financial advisors and was thereafter acted upon by all stakeholders, including the Consortium Lenders, over a considerable period of time. IPCL not only executed the Guarantee Deed but also contemporaneously executed the Indemnity Agreement dated 23.09.2016 as part of the same interconnected transaction structure, thereby consciously assuming corresponding financial obligations arising from the restructuring framework. IPCL further furnished specific contractual representations and warranties, including under Clause 7(v) of the Guarantee Deed, affirming that execution and performance of the transaction documents did not contravene any applicable Law or Regulation. The

Affidavit dated 23.09.2016 sworn on behalf of IPCL reiterated the same position. Acting upon such representations and contractual undertakings, the lenders altered their position and proceeded with the restructuring arrangement, pursuant to which IPCL and MEL derived commercial benefits. Having voluntarily entered into and acted upon the interconnected transaction structure for several years, IPCL cannot now be permitted to contend, after occurrence of default and commencement of enforcement measures, that the very instrument executed by it was void or unenforceable from inception. Notably, the transaction documents also incorporated an independent indemnity structure consciously assumed by IPCL, which further militates against the present plea that no enforceable obligation ever arose under the transaction.

166) It is also pertinent that under Clause 2.4 of the Deed of Corporate Guarantee, IPCL expressly undertook, "as primary obligor and not merely as surety", to indemnify the Phase I Lenders and the Security Trustee against all losses, damages, costs, claims and expenses arising not only on account of failure of MEL to discharge the Guaranteed Obligations, but even in a situation where the Guaranteed Obligations became "void, voidable, unenforceable or ineffective" against the Borrower or the Guarantor "for any reason whatsoever". The relevant clause reads as under:

> *2.4 The Guarantor shall as a separate and independent stipulation and without prejudice to the other provisions contained herein, as primary obligor and not merely as surety, on a full indemnity basis, indemnify the Phase I Lenders and the Phase I Security Trustee for any losses, damages, costs, claims and expenses whatsoever which the Phase I Lenders and/or the Phase I Security Trustee may suffer, pay or incur: (i) by reason of or in connection with the Guaranteed Obligations not being discharged by the Borrower; or (ii) as a result of the whole or any of the Guaranteed Obligations being or becoming void, voidable,*

unenforceable or ineffective as against the Borrower or the Guarantor for any reason whatsoever irrespective of whether such reason or any related fact or circumstance was known or ought to have been known to the Phase I Lenders or the Phase I Security Trustee or any of their respective officers, employees, agents or advisers.

167) The aforesaid clause further demonstrates that IPCL had consciously assumed liability within the overall financing arrangement even in contingencies where the Guaranteed Obligations were alleged to be void, voidable, unenforceable or ineffective. The contractual framework therefore contemplated continuing responsibilities on the part of IPCL independent of disputes relating to enforceability of the Corporate Guarantee in its strict sense. Consequently, the present contention questioning the enforceability of the Deed of Corporate Guarantee does not, prima facie, obliterate the wider contractual commitments voluntarily undertaken by IPCL under the interconnected financing documents.

168) The aforesaid conduct of IPCL, viewed in the context of the transaction documents and subsequent litigation history, clearly demonstrates that IPCL consciously acted upon the restructuring framework and permitted the lenders and other stakeholders to alter their position on that basis. Having derived benefits under the transaction structure over several years, IPCL cannot now, after occurrence of default and commencement of enforcement measures, seek to repudiate the liabilities voluntarily undertaken thereunder by contending that the transaction documents were void or unenforceable from inception. Such conduct squarely attracts the principles of approbate and reprobate, election, waiver and acquiescence. In this regard, reference may be made to the judgments of the Hon'ble Supreme Court in ***State of Punjab v. Devans Modern Breweries Ltd. (2004) 11 SCC 26, New Bihar***

Biri Leaves Co. v. State of Bihar AIR 1981 SC 679, R.N. Gosain v. Yashpal Dhir AIR 1993 SC 352 and Transmission Corporation of Andhra Pradesh Ltd. v. Sai Renewable Power Pvt. Ltd. (2011) 11 SCC 34.

169) The litigation history noticed hereinabove further reinforces the aforesaid position. Instead of treating the Corporate Guarantee as void ab initio at the relevant time, IPCL repeatedly acknowledged its existence and sought either to regulate, postpone or resist the consequences arising therefrom before different Fora. Even before WBERC, IPCL initially sought approval in relation to issuance of Corporate Guarantees and only subsequently, after default and commencement of enforcement measures, raised contentions regarding prior approval under Regulation 5.13.2. The sequence of proceedings, viewed cumulatively, reflects continued attempts to challenge different facets of the same transaction and enforcement measures through overlapping proceedings.

170) In this regard, reference may also be made to the judgment of the Hon'ble Supreme Court in ***Celir LLP v. Sumati Prasad Bafna 2024(15) SCALE 198***, wherein, relying inter alia upon ***State of U.P. v. Nawab Hussain (1977) 2 SCC 806, Devilal Modi v. Sales Tax Officer, Ratlam and Ors AIR 1965 SC 1150,*** and the English decision in ***Greenhalgh v. Mallard [(1947) All ER 255 at p.257***, the Hon'ble Supreme Court reiterated that parties cannot be permitted to reagitate issues arising from the same transaction through fragmented or successive proceedings before different Fora. It was further held that pleas earlier abandoned, withdrawn or not pursued are deemed waived and cannot subsequently be revived through collateral proceedings. The principles underlying finality of litigation, judicial discipline and prevention of abuse of process apply with full force where repetitive

proceedings are instituted raising substantially overlapping grievances. It was held:

> 148. Although in the present case, the Borrower had raised the issue of the validity of the measures taken by the Bank under the SARFAESI Act and the legality of the 9th auction conducted it in the earlier stages albeit in a different proceeding, yet its conduct of having conveniently abandoned the same in a different proceeding elected by it for the same cause of action and then later reagitating it in the pretence that the two proceedings were distinct, is nothing but a textbook case of abuse of process of law.
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> 149. Piecemeal litigation where issues are deliberately fragmented across separate proceedings to gain an unfair advantage is in itself a facet of abuse of process of law and would also fall foul of this principle. Merely because one proceeding initiated by a party differs in some aspects from another proceeding or happens to be before a different forum, will not make the subsequent proceeding distinct in nature from the former, if the underlying subject matter or the seminal issues involved remains substantially similar to each other or connected to the earlier subject matter by a certain degree, then such proceeding would tantamount to 'relitigating' and the Henderson Principle would be applicable.
>
> 150. Parties cannot be allowed to exploit procedural loopholes and different Fora to revisit the same matters they had deliberately chosen not to pursue earlier. Thus, where a party deliberately withholds certain claims or issues in one proceeding with the intention to raise them in a subsequent litigation disguised as a distinct or separate remedy or proceeding from the initial one, such subsequent litigation will also fall foul of this principle.
>
> 151. Similarly, where a plea or issue was raised in earlier proceedings but later abandoned it is deemed waived and cannot be relitigated in subsequent. Allowing such pleas to be resurrected in later cases would not only undermine the finality of judgments but also incentivize strategic behaviour, where parties could withdraw claims in one case with the intention of reintroducing them later proceedings. Abandonment signifies acquiescence, barring its reconsideration in subsequent

litigation. This ensures that judicial processes are not misused for tactical advantage and that litigants are held accountable for their procedural choices. Parties must litigate diligently and in good faith, presenting their entire case at the earliest opportunity.

171) In the present case, the material on record demonstrates that the Corporate Debtor and/or MEL had earlier challenged the Deed of Corporate Guarantee dated 23.09.2016 and the lender enforcement actions arising therefrom before competent fora, including in COS No. 266 of 2017 and subsequent proceedings. The said suit specifically sought declaration that the Guarantee Deed was illegal, arbitrary, null and void, inter alia, on the ground of alleged contravention of Regulation 5.13.2 of the WBERC Regulations. However, the said proceedings ultimately came to be withdrawn without liberty to institute fresh proceedings. The institution of successive proceedings raising substantially overlapping grievances further indicates repeated attempts to reopen issues arising out of the same transaction and enforcement measure. Having once specifically challenged the Guarantee Deed as void and thereafter withdrawn such proceedings without liberty, IPCL cannot now seek to indirectly achieve the very same result through collateral challenges in proceedings under Section 7 of the Code.

172) The cumulative conduct of IPCL noticed hereinabove demonstrates that it repeatedly acknowledged the existence of the Corporate Guarantee while simultaneously seeking to resist the consequences flowing therefrom through successive proceedings before different Fora. IPCL cannot now be permitted to both affirm and disaffirm the same transaction structure depending upon commercial convenience. The conduct noticed hereinabove therefore attracts the principles of estoppel, waiver, acquiescence, approbate and reprobate, as recognized also in ***Nagubai Ammal v. B. Shama Rao AIR***

1956 SC 593 and Joint Action Committee of Air Line Pilots' Association of India v. DGCA (2011) 5 SCC 435.

173) Though the strict provisions of the Code of Civil Procedure may not in terms apply to proceedings under the Insolvency and Bankruptcy Code, 2016, the underlying principles of estoppel, waiver, acquiescence, finality of litigation and judicial discipline are founded upon considerations of public policy and are fully applicable to adjudicatory proceedings under the Code. The insolvency framework contemplates certainty, expedition and finality in determination of commercial defaults and cannot be converted into a Forum for perpetual collateral challenges to voluntarily assumed commercial obligations through fragmented and repetitive litigation. Permitting the Corporate Debtor to repeatedly reopen the validity and enforceability of the Deed of Corporate Guarantee despite earlier proceedings arising out of the same transaction having been withdrawn, abandoned or unsuccessfully pursued would undermine commercial certainty, frustrate the time-bound scheme of the Code and amount to permitting abuse of process through multiplicity of proceedings. Significantly, despite extensive proceedings before Civil Courts, Constitutional Courts, Regulatory Authorities and Insolvency Fora over several years, the Deed of Corporate Guarantee dated 23.09.2016 has not been declared void or unenforceable by any competent Forum.

174) In view of the aforesaid discussion, We are of the considered view that the Corporate Debtor/IPCL, having consciously executed and acted upon the Deed of Corporate Guarantee dated 23.09.2016, furnished representations regarding its legality and enforceability, and repeatedly acknowledged the same in judicial, regulatory and contractual proceedings, cannot now, after occurrence of default and commencement of enforcement actions, reopen

the validity and enforceability of the said instrument through inconsistent and overlapping challenges before different Fora. The conduct of IPCL clearly attracts the principles of estoppel, waiver, acquiescence, approbate and reprobate, and finality of litigation. Permitting such repetitive collateral challenges would undermine commercial certainty and frustrate the time-bound insolvency framework contemplated under the Insolvency and Bankruptcy Code, 2016.

D. Existence of Financial Debt and Default

175) Under Section 7 of the Insolvency and Bankruptcy Code, 2016, the primary requirement is to ascertain the existence of a financial debt and occurrence of default. In the present case, it is noted that the Financial Creditor, SBI, had earlier filed CP (IB) No. 184/7/HDB/2019 under Section 7 of the Code against MEL, which came to be admitted vide Order dated 07.11.2019**.**

176) The said Admission Order was challenged by IPCL and its erstwhile Director by way of Company Appeal (AT) Nos. 1220 of 2019 and 1450 of 2019 before the Hon'ble NCLAT, which came to be dismissed vide judgment dated 10.09.2020. Thereafter, Civil Appeal Nos. 3307 of 2020 and 3309 of 2020 were preferred before the Hon'ble Supreme Court, which ultimately came to be withdrawn.

177) In view of the aforesaid proceedings, the existence of financial debt and default in respect of MEL already stands established in the proceedings initiated against the principal borrower. It is no doubt true that under Section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor. However, in proceedings under Section 7 of the Code against a Corporate Guarantor, it is additionally

required to be shown that (i) the guarantee has been invoked in accordance with its terms, (ii) demand has been made upon the guarantor, and (iii) the guarantor has failed to discharge its liability.

178) In the present case, the debt and default stand established not only from the admitted default of MEL, but also from the material placed on record, including the details of disbursement (**Exhibit-5**), computation of the defaulted amount in relation to the Phase-I Facility (**Exhibit-6**), and the financial statements (**Exhibit-7**). Further, the Deed of Corporate Guarantee was duly invoked and Demand Notices dated 20.12.2017 and 07.02.2020 were issued to IPCL calling upon it to discharge its liability. The failure of IPCL to honour the said demands constitutes a distinct and continuing default on the part of the Corporate Guarantor.

179) Insofar as limitation is concerned, it is settled that a Petition under Section 7 of the Code is governed by Article 137 of the Limitation Act, 1963, which prescribes a period of three years from the date when the right to apply accrues. It is observed that a Notice of Demand and Invocation of Pledge dated 20.12.2017 (**Exhibit-8**) had been issued invoking the Deed of Corporate Guarantee and calling upon the Corporate Guarantor to discharge its liability within the stipulated period. Another Notice dated 07.02.2020 (**Exhibit-17**) thereafter came to be issued. Therefore, the date of default qua the Corporate Guarantor would arise upon failure to comply with the demand made under the Notice dated 20.12.2017, i.e., after expiry of the stipulated period of seven days therefrom, and not 31.01.2020 as mentioned in the Petition.

180) The liability of the Guarantor arises upon such invocation and failure to pay within the time stipulated therein. The subsequent Notice dated 07.02.2020 is substantially in the nature of a reiteration of the earlier demand. Accordingly, the right to apply accrued upon the failure of the Corporate Guarantor to discharge its liability within the stipulated period of 7 days from the Notice dated 20.12.2017. Even upon exclusion of the said period, the present application, having been filed on 26.02.2020, is within the prescribed period of limitation. This position is in consonance with the Law laid down in ***B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates (2019)11 SCC 633***.

181) It has also been contended by the Corporate Debtor/IPCL that upon issuance of the Notices of Demand and Invocation of Pledge dated 20.12.2017 and consequent transfer of the pledged shares of MEL in favour of SBICAP Trustee Company Limited, the underlying debt stood satisfied and, therefore, the Petitioner ceased to retain the character of a Financial Creditor. This contention is misconceived and contrary to the settled position of Law. In ***PTC India Financial Services Limited v. Venkateswarlu Kari & Anr. 2022 SCC OnLine SC 628***, the Hon'ble Supreme Court has categorically held that invocation of pledge and transfer of pledged shares in favour of the pledgee does not by itself amount to sale of the pledged goods nor does it automatically extinguish or satisfy the underlying debt. The pledgee merely acquires and exercises the rights available under Section 176 of the Indian Contract Act, 1872, and the debt continues to subsist unless lawfully discharged or appropriated in accordance with Law. In the present case, the transfer of pledged shares in favour of SBICAP Trustee Company Limited was in exercise of the rights of the Security Trustee acting for and on behalf of the Consortium Lenders and cannot ipso facto be construed as

extinguishment of either the liability of MEL as principal borrower or the co-extensive liability of IPCL as Corporate Guarantor. Significantly, substantially similar contentions regarding invocation of pledge and alleged extinguishment of debt had earlier been raised by IPCL and/or MEL in proceedings arising out of the CIRP of MEL before the Hon'ble NCLAT and thereafter before the Hon'ble Supreme Court in Civil Appeal Nos. 3307 of 2020 and 3309 of 2020, which ultimately came to be withdrawn. The said contention is therefore liable to be rejected.

182) It is also material to note that IPCL had contemporaneously executed the Indemnity Agreement dated 23.09.2016 (**Annexure R-24**) in favour of the consortium lenders as part of the same restructuring and financing arrangement. The said agreement contemplated indemnification of the lenders against losses, claims, damages, costs and liabilities arising from non-discharge of obligations under the transaction documents or arising from non-discharge of obligations under the transaction documents, or from any of the obligations under the Corporate Guarantee being or becoming void, voidable, unenforceable or ineffective as against the borrower or IPCL for any reason whatsoever. The existence of the said Indemnity Arrangement further reinforces the contractual and commercial obligations consciously undertaken by IPCL within the overall financing structure. However, for purposes of the present proceedings, it is unnecessary to undertake any further examination of the independent scope or enforceability of the obligations arising under the said Indemnity Agreement, since the existence of financial debt and occurrence of default already stand established on the basis of the underlying financial facilities, the Deed of Corporate Guarantee, invocation thereof and the continuing failure of the Corporate Guarantor to discharge its liability.

183) Accordingly, we accept the submissions of the Learned Senior Counsel for the Petitioner that in light of the settled position of Law laid down in ***Innoventive Industries Ltd. v. ICICI Bank (2018)1 SCC 407*** **and** ***E.S. Krishnamurthy & Ors. v. M/s Bharath Hi Tech Builders Pvt. Ltd. (2022)3 SCC 161***, this Adjudicating Authority is only required to ascertain the existence of financial debt, occurrence of default and completeness of the application. All the aforesaid requirements having been satisfied in the present case, therefore this point is answered in favour of the Petitioner.

Reliefs

184) In view of findings recorded on issue Nos. 1 to 4, we hereby admit CP (IB) No. 205/7/HDB/2021 under Section 7 of the Insolvency and Bankruptcy Code, 2016 and declare moratorium for the purposes referred to in Section 14 of the Code, with the following directions:

i. We hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor;

ii. Notwithstanding anything contained in any other Law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

iii. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

iv. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

v. That the order of moratorium shall have effect from the date of this Order till the completion of the Corporate Insolvency Resolution Process or until this Tribunal approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

vi. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

vii. We appoint Ms. Medarametla Srinivasa Manoranjani, Insolvency Professional as Interim Resolution Professional (**IRP**), having Registration No.IBBI/IPA-001/IP-P00736/2017-2018/11235, residing at Flat 122, Vasavi Indraprastha, Street 1, Czech Colony, Sanathnagar, West Marredpally, Hyderabad – 500 018, email: mano3ranjani@gmail.com, Mobile No.9848559322. As per the IBBI website her AFA is valid upto 30.06.2027. The IRP has no disciplinary proceedings pending against her. She shall file her written communication and all relevant papers immediately before the Registry of this Tribunal but not later than two days. Further Registry is directed to inform the Order of Admission of CIRP against the Corporate Debtor to the concerned parties.

viii. Her fee is assessed at Rs.1,00,000/- excluding other charges. The COC will finally take decision to continue her as Resolution Professional and further fee structure.

ix. The IRP shall perform all her functions as contemplated, inter alia, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoters or any other person associated with management of the Corporate Debtor are under legal obligation, under Section 19 of IBC 2016 to extending every assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its promoters or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to the Adjudicating Authority with a prayer for passing an appropriate order.

x. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016.

xi. Registry of this Tribunal is directed to send a copy of this Order to the Registrar of Companies (**ROC**), Hyderabad for making appropriate remarks against the Corporate Debtor on MCA site of Ministry of Corporate Affairs as being under CIRP.

Sd/- **Sd/-**

(SANJAY PURI)
MEMBER (TECHNICAL)

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

Syamala