NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH
CHENNAI

COMPANY APPEAL (AT)(INS)(CH) NO.262/2026
&
IA NO.737 & 740 OF 2026
&
IA NO.738/2026, 739/2026

IN THE MATTER OF:

Debashish Bose **Appellant**

Vs

State Bank of India & Anr **Respondent**

For Appellant: Mr Mukul Rohatgi, Sr Advocate, Krishnendu Dutta, Senior Advocate, For Mr. Anirban Bhattacharya, Mr. Kanu Agrawal, Ms. Aishwarya Shrivastava, Mr. Ankur Chawla, Mr. Devanshu Agarwal, Mr. Rajeev Chowdhary, Mr. Yash Tandon, Ms. Prerna Mahajan & Ms. Ishanee Kapoor, Advocates

For Respondent: Mr. Gopal Jain, Sr Advocate, Mr. Kaustubh Rai, Advocate for IRP/RP.
Mr. Tushar Mehta, Solicitor General, Ms. Surbhi Khattar, Mr. Shivash Vishwakarma, Ms. Pallavi Agarwal & Mr. Ansh Asawa, Advocates for R1

With
COMPANY APPEAL (AT)(INS)(CH) NO.263/2026
&
IA NO.741 OF 2026
&
IA NO.742/2026, 743/2026, 744/2026

IN THE MATTER OF:

Pragya Jhunjhunwala **Appellant**

Vs

State Bank of India & Anr **Respondent**

For Appellant: Mukul Rohatgi, Senior Advocate, Mr. Krishnendu Datta, Senior

Advocate, For Mr. Anirban Bhattacharya, Mr. Kanu Agrawal, Ms. Aishwarya Shrivastava, Mr. Ankur Chawla, Mr. Devanshu Agarwal, Mr. Rajeev Chowdhary, Mr. Yash Tandon, Ms. Prerna Mahajan & Ms. Ishanee Kapoor, Advocates

For Respondent: Mr. Gopal Jain, Senior Advocate, Mr. Kaustubh Rai, Advocate for IRP/RP.
Mr. Tushar Mehta, Solicitor General, Ms. Surbhi Khattar, Mr. Shivash Vishwakarma, Ms. Pallavi Agarwal & Mr. Ansh Asawa, Advocates for R1

ORDER

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

The brief facts as are urged before me are *vide* impugned order dated 15.05.2026 of the Ld. NCLT, Hyderabad, the India Power Corporation Ltd. (in short **"IPCL"**) was admitted into insolvency. It was argued the principal borrower M/s Meenakshi Energy Pvt Ltd had obtained financial assistance from a consortium of lenders led by State Bank of India for a 1000 MW coal based thermal power project and to which the IPCL stood as a corporate guarantor and had executed a corporate guarantee in favour of SBI.

2. M/s Meenakshi Energy Pvt Ltd defaulted on repayment of loan taken on 07.11.2019 from SBI. The CIRP proceedings were initiated against it by an order of the Ld. NCLT. Thereafter the SBI invoked corporate guarantee and demanded repayment of loan of Rs.*967.21* crore from the corporate guarantor *viz* IPCL, under the corporate guarantee for phase 1 facilities.

3. Later SBI filed CP(IB) No.205/HDB/2021 under Section 7 of IBC against *IPCL* before the Ld. NCLT, Hyderabad. On 30th October, 2023 the Ld. NCLT

dismissed the said petition holding the corporate guarantee was void and unenforceable. The said order dated 30th October, 2023 was challenged before this Tribunal but it met with the same fate. The matter was taken to Hon'ble Supreme Court in Civil Appeal No.*8178/2023* where *vide* order dated 14.02.2025 the Hon'ble Supreme Court set aside the order of the Ld. NCLT and directed fresh consideration on Section 7 IBC application of SBI after considering the rejoinder filed by it, which rejoinder was refused to be taken on record by the Ld. NCLT while passing of the order of 30th October, 2023. Later *vide* the impugned order the Ld. NCLT reversed its earlier order dated 30.10.2023 and held the petition under Section 7 IBC to be maintainable; admitted it and directed commencement of CIRP against IPCL.

4. The above two appeals have been filed by the appellants challenging the same impugned order. While dealing with stay application(s) *viz* IA No.*738/2026* and IA No.*743/2026,* the Ld. Members of this Tribunal gave different opinions, hence the matter was referred to the undersigned.

5. The learned counsel for the appellant argued the execution of the corporate guarantee required prior permission to be obtained from the regulator i.e., West Bengal Electricity Regulatory Commission. Admittedly such permission was never obtained because of the legal opinions obtained by the appellants (IPCL) and also by the respondents from retired Ld. Judges/ Ld. Lawyers who opined such permission is not required at all. Thus, the Deed of Guarantee dated 23.09.2016 was executed by the appellant in favour of the respondent bank(s).

6. Further, it was argued not only there was a change of opinion of the Ld. NCLT between the first order dated 31.10.2023 when the petition under Section 7 IBC filed against the IPCL was dismissed and the impugned order dated 15.05.2025, wherein the same Section 7 IBC petition was admitted but the Bench of this Tribunal has also given split decisions and thus it is all the more required the stay be granted. It was also argued the nature of the corporate guarantee was a restricted one and not an absolute guarantee and the amount due is only payable from the non-electricity distribution business of the IPCL. Hence, the only remedy available with the respondent was to file a suit for recovery of dues *qua* this conditional guarantee, which remedy admittedly is utilized. It was argued by the appellant IBC is not a recovery mechanism and even if both the Electricity Act as well as the IBC have non-obstante clauses, it is not an absolute rule the latter Act shall prevail and rather the Court is such circumstances needs to look into the dominant purpose for which the earlier Act was enacted.

7. It was argued IBC mainly concerns with the revival of the companies; maximization of the assets and is not to be used as a recovery mechanism against debtors. It was alleged the appellant IPCL has been supplying electricity to thousands of customers in West Bengal; attached to the grid of the State and such grid is attached to the National Grid. It was argued electricity is a necessity and ensuring adequate and continuous supply is the dominant purpose of the Act and thus in this background one need to examine the terms of Guarantee.

8. Reference was made to the Deed of Guarantee dated 23.09.2016, more specifically to its following clauses as under:

> *"1. Definition*
>
> *1.1 xxxx*
>
> *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.*
>
> *Guaranteed Obligations shall mean:*
>
> *a) xxx to g) xxx*
> *h) The Guarantor's obligation to maintain a minimum DSCR of 1.20 (one point two zero) throughout the tenure of the Loan.*
>
> *Non Regulated Asset shall mean all assets of the Guarantor other than the Regulated Asset.*
>
> *Xxxxx*
>
> *Xxxxx*
>
> *Regulated Asset shall mean all the revenues and receivables of business and operations of the Dishergarh Electric License.*
>
> *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 Assets, and is determined in accordance with the Dishergarh Electric License.*
>
> *WBERC shall mean West Bengal Electricity Regulatory Commission."*

9. Clause 2 of the Deed of Guarantee read:-

> *"2. GUARANTEE*
>
> *2.1. The Guarantor, hereby irrevocably, absolutely and unconditionally guarantees to the Phase I Security*

Trustee for the benefit of the Phase [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 I 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 1 Facility, as stated in the Demand Certificate to be issued by the Phase I Lenders/ Phase I Security, Trustee."

10. Thus it was argued the guarantee is not an absolute one and is restricted only to the *non-electric business* of the company and to the *surplus amount* as noted in paras *2.1* and *2.2* (supra) of the Deed of the Guarantee. It was argued it was only for this reason the Ld. NCLT in its first round had dismissed the application under Section *7* of IBC *vide* order dated 30.10.2023.

11. Reference was also made to the West Bengal Electricity Regulatory Commission (Licensing and Conditions of License) Regulations, 2013, more specifically to its following clause:

> *"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 effected directly or indirectly then in such case licensee is required to obtain such written consent from the Commission in a manner as already specified.*
>
> *5.19 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."*

12. Reference was also made to a letter dated 29th July, 2016 by the IPCL to the General Manager, Rural Electrification Corporation Ltd for approval for the proposed stake sale of MEPL to IPCL and the attachment to such letter reads as under:

PCC No.21	*Corporate Guarantee of IPCL to be provided. LLC to certify whether IPCL is required to take permission from State Regulatory Commission under clauses of Licensee, if any, as IPCL acts as Distribution Franchisee. Necessary due diligence to be done by Law Division of REC*	*Corporate Guarantee of IPCL to be provided. LLC to certify whether IPCL Is required, to take permission from State Regulatory Commission under clauses of Licensee or the Distribution Franchisee Agreement, if any. as IPCL acts as Distribution Licensee and Distribution Franchisee. Necessary due diligence to be done by Law Division of REC*

13. Reference was also made to letter dated 22.09.2016 written by the DGM, Generation of REC to Meenakshi Energy Pvt. Ltd. as under:

S.No.	***Existing Condition***	***Modified Condition***
1.	*Pre-Commitment Condition No. 21 of REC letter dated 28.07.2016* *Corporate Guarantee of IPCL to be provided. LLC to certify whether IPCL is required to take permission from State Regulatory commission under clauses of licensee, if any, as IPCL acts as Distribution Franchisee. Necessary due diligence to be done by Law division of REC.*	*Corporate Guarantee of IPCL to be provided, on all assets other than WBERC regulated asset.* *Additionally, with respect to WBERC regulated asset, following additional condition is stipulated-* *IPCL to provide an Undertaking that any surplus funds that are generated from the WBERC Regulated Asset i.e. funds remaining after meeting the requirements of the regulated business viz. after payment of statutory dues, capital expenditure, operating costs and debt servicing payments that are required to be made in relation to the WBERC*

		Regulated Asset, be utilized by IPCL to make payments towards debt servicing obligations of the Company if a demand is made by the Phase Il Lenders. *The above Undertaking shall form part of the Corporate Guarantee of IPCL.*

14. It was argued vide orders dated 09.11.2017 and dated 07.08.2018, the West Bengal Electricity Regulatory Commission declined such permission so sought for issuance of the Deed of Guarantee and since the IPCL went ahead to execute such Deed of Guarantee, the West Bengal Regulatory Commission vide order dated 22.12.2021 initiated proceeding under Section *142* of the Electricity Act against IPCL.

15. The learned Sr. counsel for the appellant referred to 'State Bank of India' Vs. 'Union of India & Ors.', [2026 SCC OnLine SC 202], wherein the Hon'ble Supreme Court held *"where two enactments are attracted to the same factual matrix, the initial enquiry must be directed towards determining whether either statute is general or special in relation to the subject matter in issue and this determination is not to be made in abstract by examining the dominant subject matter of the statute, viewed though the prism of its legislative intent".* Further reference was made to 'Asha John Divianathan' Vs. 'Vikram Malhotra & Ors.', [(2021) 19 SCC 629], *to say a contract is void if prohibited by a statute under a penalty, even without express declaration that the contract is void, because such a penalty implies a prohibition.*

16. Thus, it was argued since the permission was refused by the Regulators, the Deed of Guarantee could not be treated as a valid Deed of Guarantee and was not an enforceable document, hence no proceeding under Section *7* could have been initiated.

17. On the other hand, the learned Solicitor General argued on behalf of the Respondent Bank(s) stating *inter alia* though the money was initially lent to M/s. Meenakshi Energy Pvt. Ltd. but it wished to walk out and IPCL took over its responsibilities and executed a Deed of Guarantee dated 23.09.2016. He also referred to the following clauses of the Deed of Guarantee viz.:-

> *(F) One of the conditions of the Amendment Agreement is that the Guarantor shall enter into this Guarantee in favour of the Phase I Security Trustee for the benefit of the Phase I lenders and provide a guarantee and undertaking to secure the Guarantee Obligations.*
>
> ***17. REPRESENTATIONS AND WARRANTIES***
>
> *17.1 xx*
>
> *(i) xx*
>
> *(ii) Authorisation: The Guarantor is empowered and authorised to execute this Guarantee and all related documents in accordance with its memorandum of association and articles of association or constitution, as the case may be, and all regulatory and corporate authorizations and consents required in connection with the execution, perfection, delivery and performance of this Guarantee have been obtained and are in full force and effect and all conditions of each such authorization and consent have been complied with.*
>
> *(iii) xx*
>
> *(iv) Government Consents and Actions: All acts, conditions and things, which are necessary or advisable to be done, fulfilled or performed in connection with (i) the execution, delivery or*

performance of the Guarantee; (ii) the legality, validity and enforceability hereof; and (iii) the admissibility in evidence of this Guarantee have been duly done, fulfilled and/or performed and are in full force and effect.

18. COVENANTS

(i) Compliance: The Guarantor shall obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all approvals, authorizations, consents and licenses required by Applicable Law to enable it lawfully to enter into and perform its obligations under this Guarantee or to ensure the legality, validity, priority, enforceability or admissibility in evidence of this Guarantee.

18. Further he also referred to an affidavit given by Mr. Ashok Kumar Goswami, Director of IPCL to the following effect:

1. That 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

2. That in relations 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)

3. That, I hereby certify declare and confirm on behalf of 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 the obtain the prior consent of the West Bengal Electricity Regulatory Commission for issuing the Corporate Guarantee in accordance with terms thereof.

4. That the facts and matters deposed to herein are within my own knowledge and are true.

19. The learned Solicitor General argued the demand certificate was issued by the Respondent Bank(s) on 20.12.2017 but on 25.12.2017, IPCL filed a Civil Suit COS No.*266/2017* seeking declaration that Deed of Guarantee is void, illegal and

arbitrary. An order dated 09.11.2017 was passed in the said Suit holding *inter alia* though the Deed of Guarantee dated 23.09.2016 could never have been executed without the prior approval of the Regulator but now since it has been executed without such approval, it cannot be treated as a non-est, illegal and void. The Suit was later *withdrawn* on 02.04.2019 *without seeking any liberty* to challenge the Deed of Guarantee dated 23.09.2016 being void. Further between 30.07.2018 to February, 2020, the IPCL filed various writ petitions but all those Writ Petitions were later withdrawn and the initial stay(s) granted in such Writ Petitions were all vacated.

20. Admittedly, on 07.11.2019, the lenders moved against the principal borrower - M/s. Meenakshi Energy Pvt. Ltd. for initiation of the CIRP and such petition was admitted. The appeal against the order of admission was also dismissed by this Tribunal and even no relief was granted by the Hon'ble Supreme Court in such matter.

21. Further it was argued on 07.02.2020 a demand certificate was issued for a sum of Rs.*967* crore to IPCL and then a petition was filed under Section *7* IBC. It was only after the issuance of notice of demand, in August 2020, the IPCL moved an application before the Regulators to know if prior permission was required for executing the Deed of Guarantee when admittedly it had already executed the Deed of Guarantee in 2016 itself. Of course, the Regulatory denied such permission and even initiated prosecution against IPCL.

22. It is also the case of the Respondent Bank(s) that in January 2022, a money suit No.*01/2022* was filed by the IPCL at Alipore, Kolkata, wherein an injunction was sought against recovery of the amount under the Deed of Guarantee; which injunction was initially granted on 24.01.2022 but was vacated on 09.09.2022 on the ground, the IPCL is a guarantor. The order dated 09.09.2022 of the Ld. Civil Court was rather confirmed in FMA *1370/2020* by the Hon'ble High Court of Kolkata and it read:-

> *"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 can not be applied abjunctly nor in abstract manner. Two corporate entities who are well equipped to understand their commercial interest, 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."*
>
> *"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 assets as it has no impact on its business to the affected directly or indirectly. In fact there was no attempt made by the appellants unless it senses that lenders may invoked corporate guarantee because of the default having committed by the MEL."*

23. It was argued though the petition under Section *7* of IBC was initially dismissed on 30.10.2023 by the Ld. NCLT holding *inter alia* the Deed of Guarantee is void and unenforceable and even though an appeal before this Tribunal met with the same fate but admittedly the Hon'ble Supreme Court remanded the matter to the Ld. NCLT to examine it again, especially in the light of a rejoinder to I.A. No.648/2021 which contained an admission by the IPCL *qua* the Deed of Guarantee. It was only in these circumstances, an order under Section *7* of IBC was passed.

24. I have heard the arguments in detail. Admittedly, under Section *7* of IBC, only *debt* and *default* needs to be examined and the *debt* in the present case alleges to have been *established* through an admission order dated 07.11.2019 against the principal borrower viz. M/s. Meenakshi Energy Pvt. Ltd. The CIRP of M/s. Meenakshi Energy Pvt. Ltd. has since been concluded and even resolution plan has been approved. IPCL even sought a stay upon the CIRP of M/s. Meenakshi Energy Pvt. Ltd. but it was denied. The IPCL being a guarantor, its liability is co-extensive with that of the principal borrower. Now admittedly upon issuance of demand notices dated 20.12.2017 and 07.02.2020, no payment was forthcoming from IPCL. The fact that IPCL sought relief, basis its

status, as a guarantor in the rejoinder in I.A. No.*648/2021* filed in CIRP of Meenakshi Energy Pvt. Ltd. cannot be ignored at this stage.

25. The appellant rather represented to the lenders, all approvals for the Deed of Guarantee are in place *per* Clause *17(ii)* and *17(iv)* of Deed of Guarantee (Supra). Further admittedly, the Civil Suit COS *266/2017* (supra) and money suit No.*01/2022* (supra) were filed by IPCL, wherein the Deed of Guarantee was challenged but it got adverse orders. Further, admittedly upon withdrawal of COS *266/2017* (supra), no liberty was sought to challenge the Deed of Guarantee *being void* and hence now it cannot be contended the guarantee is void. The judgment in FMA *1370/2020* (supra) was also never challenged. In 'SRM Exploration Pvt. Ltd.' Vs. 'N & S & N Consultants S.R.O.', *[2012 (129) DRJ 113 (DB)]* as well as in 'The Mauritius Commercial Bank' Vs. 'Varun Corporation Ltd.', *[2017 SCC OnLine NCLT 2424];* on similar averments, similar reliefs sought, were denied.

26. Admittedly, IPCL is a sophisticated commercial undertaking with equal bargaining power, cannot now challenge the Deed of Guarantee to be restricted only to *non-regulated* assets and *surpluses* from the regulated assets or that the admission into CIRP shall affect the regulated assets. Though, clause *2.7* of the Deed of Guarantee has been relied upon by the appellants but it may not help the appellants, in view of clauses *2.1* and *2.3* of the Deed of Guarantee itself.

27. Clauses *2.3* & *2.7* of the Deed of Guarantee dated 23.09.2016 are as under:-

> *"2.3 The Guarantor irrevocably, absolute 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 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 Assets. In order to perform its obligations under Clause 2.2 above, the Guarantor shall utilize the Surplus Amounts."*

28. If we give appellant's interpretation to Clause *2.7* then it would mean if the non-regulated assets are not sufficient to meet liabilities, the lender would have no right against other assets. Such an interpretation cannot be given in view of clause *2.3* above wherein the guarantee is made *irrevocable, absolute* and *unconditional to pay without demur or protest or without the right of any set of and relief or adjustments of any kind.* In 'S. Elangovan' Vs 'ASREC (India) Ltd.& Anr.', *[2022 SCC OnLine NCLAT 2859],* the Court held an extent of liability is not a determining factor at the stage of initiation of CIRP. The argument of the appellant if the Deed of Guarantee is made restricted to non-regulated assets and/or surplus from regulated assets, the CIRP proceedings could never be initiated even when such assets were insufficient to discharge its *debt* seems illogical.

29. Thus, considering the fact the impugned order notes the *debt* and *default* being established, which *per se* is required to be seen at the time of admission

under Section *7* IBC and further in view of the fact the interim orders granted by the Civil Court(s) and in Writ Petitions all stood vacated; there being no challenge to judgments in civil suits and more so in view of allegations that IPCL has already transferred its non-regulated business *viz.* forming large part of its assets to a subsidiary i.e. IPCL Power Limited, through a business transfer agreement in clear violation of Deed of Guarantee and without prior approval of the lenders; thus their exist an apprehension *if* suspended management is handed over the company, it may further diminish assets of the company and also considering the admission of appellant in its rejoinder to I.A. 648/2021 in CIRP of M/s. Meenakshi Energy Pvt. Ltd., I am not inclined to grant any stay at this stage, especially when, despite the company being with the Resolution Professional, there is no allegation of disturbance of supply in electricity.

30. Upon the argument that The Indian Electricity Act shall prevail and the dominant purpose of the Act need to be seen, we find no exception being carved in IBC for power distribution companies. Rather the Hon'ble Supreme Court has upheld the privicy of the IBC over the Electricity Act and/or other Acts holding the regulated entities, including the electricity distribution company can be subjected to the CIRP *per* order dated 02.01.2024 in 'REC' Vs. 'Hiranmay Energy Ltd.', *C.P. (IB)No.138 of 2021,* as well as 'Power Trust' Vs. 'Bhuvan Madan', *[2026 SCC OnLine SC 248];* and more so, in view of a letter addressed by the Ministry of Power, Government of India to the Secretary of Department of Legal Affairs in November, 2021 clarifying that CIRP can be initiated even against State owned

electricity distribution and State owned electricity generation companies under the provisions of IBC. Thus this argument fails.

31. In 'Paschimanchal Vidyut Vitran Nigam Ltd.' Vs. 'Raman Ispat Pvt. Ltd. & Ors.' *[(2023) 10 SCC 60]*, the Hon'ble Supreme Court has held:-

> *"57. Similarly, in Duncans Industries Ltd. v. AJ Agrochem, Section 16G of the Tea Act, 1953 which required prior consent of the Central Government (for initiation of winding up proceedings) was held to be overridden by the IBC. In a similar manner, it is held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (i.e., Section 173 and 174). The position of law with respect to primacy of the IBC, is identical with the position discussed in Duncans Industries Ltd. v. AJ Agrochem, (2019) 9 SCC 725. Sundaresh Bhatt and Duncan Industries (supra) [refer also: Innoventive Industries (supra), CIT v. Monnet Ispat & Energy Ltd.40, Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.41, and Jagmohan Bajaj v. Shivam Fragrances Private Limited42].*

32. Thus, on facts I am not inclined to grant stay against the impugned order at this stage. The appeal be set for hearing at an early date.

33. The file be sent to the concerned Court/Bench.

(Justice Yogesh Khanna)
Member (Judicial)

30.07.2026

Bm/rr