

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT IV
COMPANY PETITION IB 204 (ND) 2025**

Order under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

CANARA BANK (E-SYNDICATE BANK)

...Applicant/Financial Creditor

Versus

RATTANINDIA ENTERPRISES LIMITED

...Respondent/ Corporate Debtor

Order Pronounced On: 09.12.2025

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI,

HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Hitesh Sachar, Advocate.

For the Respondent : Mr. Krishnendu Datta, Senior Advocate, Mr. Dipanshu Krishan, Ms. Tanvi Sapra, Mr. Karan Batura, Advocates.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The present Application has been filed on behalf of Canara Bank (“Applicant/Financial Creditor”) under Section 7 of the Insolvency and the Bankruptcy Code, 2016 (“Code”) to initiate corporate insolvency resolution process against RattanIndia Enterprises Limited (“Respondent/Corporate Debtor”) on the ground that the Corporate Debtor has defaulted in the payment of financial debt amounting to Rs. 3,72,35,67,407.77 (Rupees Three Hundred Seventy-Two Crore Thirty-Five Lakh Sixty-Seven Thousand four Hundred Seven and Seventy Seven Paisa) due as on 30.12.2024 along with penalties and future interest from 01.01.2025.
2. The Corporate Debtor herein RattanIndia Enterprises Limited having CIN L74110DL2010PLC210263, incorporated under the provisions of the Companies Act, 1956 is having its registered office at 5th Floor, Tower-B, Worldmark 1, Aerocity, South West Delhi, New Delhi, Delhi, India, 110037. Since the registered office of the Corporate Debtor is situated in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority under sub-section (1) of section 60 of the Code in relation to the prayer for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
3. **SUBMISSIONS OF THE APPLICANT/FINANCIAL CREDITOR:**
 - i. In the years 2010, 2014, 2016 Principal Borrower Sinnar Thermal Power Limited approached the Consortium of seven Banks/FIs led by Power Finance Corporation (PFC) for certain credit facilities for funding coal based thermal power project located in Multi product SEZ at Sinnar, District Nasik, Maharashtra. Accordingly, the Applicant bank along with Consortium of Banks vide sanction letter dated 26.02.2010 bearing Ref. No. 9044/NP/CREDIT/INDBULLS/2010 sanctioned Credit Facility-1 of Rs.100 Crore. Further, Applicant Bank along with Consortium of Banks vide sanction letter dated 26.03.2014 bearing Ref. No. 9044/ADV/85/NP/2013 sanctioned Credit Facility-2 (COR-1) of Rs. 15.57 Crores. Further, Applicant Bank along

with Consortium of Banks vide sanction letter dated 30.08.2016 bearing Ref. No. 356/9044/2016 sanctioned Credit Facility-3 (COR-2) of Rs. 28.83 Crores.

- ii.** The Applicant Bank along with Consortium of Banks sanctioned credit facilities to the tune of Rs.144.40 Cr to the Principal Borrower in the following manner:

Facility	Limit (Rs. in Crores)
Rupee Term Loan (26.02.2010)	100.00
Term Loan (COR-I) (26.03.2014)	15.57
Term Loan (COR-II) (30.08.2016)	28.83
Total	144.4

- iii.** The Facility-1 of Rs. 100 Crores Term Loan was valid till 30.09.2023, and was for setting of Coal based Thermal Power Project in Multi Product Special economic Zone at Sinnar Village in Nasik District in the state of Maharashtra. Facility-2 of Rs.15.57 Crores Term Loan for Cost Overrun Facility, and was to be repaid starting from October 2015. Facility- 3 of Rs. 28.83 Crores Term Loan for meeting the increased cost of project, and was to be repaid starting from 31.03.2017, to be paid in 10 years.
- iv.** As there was default in the repayment of the said enhanced facility, the account of the Principal Borrower slipped into Non-Performing Asset (NPA) on 28.09.2017 as per the guidelines and directions issued by the Reserve Bank of India.
- v.** In spite of repeated follow up with the Principal Borrower, no serious steps were taken by the Principal Borrower to clear the dues of Applicant Bank/Financial Creditor and as the account was still continuing as NPA, therefore Applicant Bank sent recall notice on 30.09.2020 bearing Ref. No. LN/Re-CALL/to the Principal Borrower and demanded the entire outstanding amount of Rs. 202,03,39,436.49/- (Rs. Two Hundred Two Crores Three Lakh

Thirty-Nine Thousand Four Hundred Thirty-Six and Forty Nine Paise) which included Principal, Interest and other charges upto 31.07.2020.

- vi.** The Applicant Bank on 09.06.2021 also sent a Notice under Section 13(2) SARFAESI Act, 2002 to Principal Borrower. Thereafter, Principal Borrower instead of repaying the outstanding dues of the Applicant Bank, raised frivolous objections on 09.08.2021 to notice under Section 13(2) of SARFAESI Act, 2002. The Applicant Bank on 18.08.2021 sent reply to the Objections raised by the Principal Borrower to its Section 13(2) Notice.
- vii.** In spite of repeated follow up with the Principal Borrower, no serious steps were taken by the Corporate Debtor/ Principal Borrower to clear the dues of Applicant Bank/Financial Creditor and the account still continuing as NPA.
- viii.** Further, the liabilities toward the Applicant Bank/Financial Creditor were duly acknowledged by the Principal Borrower, in its financial statements for the year ended 31.03.2019 and 31.03.2021. The independent Auditor Report dated 26.06.2020 has also duly authenticated the default in part of Principal Borrower towards the consortium Banks.
- ix.** On 20.09.2021 the Principal Borrower gave One Time Settlement (OTS) Proposal towards the outstanding debt to the Consortium Members including the Applicant Bank.
- x.** The Applicant Bank/Financial Creditor had filed application under Section 7 of Insolvency and Bankruptcy Code, 2016 being C.P. (IB) No. 567 of 2022 against the Principal Borrower. It is pertinent to mention that against the Principal Borrower in another petition filed under Section 9 of Insolvency and Bankruptcy Code, 2016 being C.P. (IB) No. 2561 of 2019 the Hon'ble NCLT Bench-IV initiated the CIRP against the Principal Borrower vide order dated 19.09.2022 and accordingly the Applicant was given the liberty to lodge its claim with Resolution Professional. Accordingly, on 23.08.2023 the Applicant filed its claim against the Principal Borrower with the Resolution Professional so appointed. The said CIRP process against the Principal Borrower is still going on. On 28.11.2023, the Principal Borrower issued a letter to the lenders, including Applicant Bank with respect to "Alternate Proposal for operationalization of Plant Sinnar Thermal Power Limited (1350 MW).

- xi.** On 17.04.2024, the Promoter of Corporate Guarantor issued a letter to the lenders, including Applicant Bank with respect to "Proposal for settlement of the financial debt of Sinner Thermal Power Limited". By said letter, Applicant Bank once again reiterated their stand and offer of One Time Settlement of its dues. The various acknowledgments extends the period of limitation. In view of the above the present application is well within limitation period.
- xii.** The Applicant has relied on the following cases to advance its case:
- a.** Laxmi Pat Surana vs Union Bank of India Civil Appeal no. 2734 of 2020.
 - b.** S. Elangovan Vs ASREC (India) Ltd. Company Appeal (AT) (CH) (INS) No. 102 of 2022.
 - c.** Dena Bank (now Bank of Baroda) Vs. C. Shivkumar Reddy and Anr. Civil Appeal No. 1650 OF 2020.
 - d.** Tejas Khandhar Vs Bank of Baroda Company Appeal (AT) (Ins) No. 371 of 2020.
 - e.** Ashish Kumar S/o Rajendra Kumar Jain Vs. Mr. Vinod Kumar Pukhraj Ambavat RP Company Appeal (AT) (Insolvency) No. 1411 of 2019.
 - f.** M/s. Marlin Travels Pvt. Ltd. Vs ECA Engineering Pvt. Ltd. (C.P. IB No. 511/ND/2023).
 - g.** Innoventive Industries v. ICICI Bank Civil Appeal No. 8337-8338 of 2017.
 - h.** E.S. Krishnamurthy & Ors Vs Bharat Hi Tech Builders Pvt. Ltd. Civil Appeal No. 3325 of 2020.
 - i.** M. Suresh Kumar Reddy vs Canara Bank Civil Appeal No. 7121 of 2022.
 - j.** Rajesh Kedia Ex-Director of Ajanta Paper and General Products Ltd. Vs Phoenix ARC Private Limited and Ors. Company Appeal (AT)(INS) 996 of 2021.
 - k.** Guruprasad V. Hishobkar vs. Shree Aasrayaha Souhard Credit Society Limited and Ors. MANU/NL/0582/2013.
 - l.** Mr. Vineet Khosla vs M/S Edelweiss Asset Reconstruction Company Ltd. and Ors. Comp. App. (AT) (INS) No. 441 of 2019.
 - m.** Punjab National Bank vs James Hotels Ltd. (CP (IB) No. 15/chd/CHD/2017).

- n. Bikram Bahadur vs Union Bank of India and Anr. Company Appeal (AT)(Ins) No. 1289 of 2024.
- o. Asset Reconstruction Company vs. Tulip Star Hotels Civil Appeal Nos. 84-85 of 2020 MANU/SC/0946/2022.

xiii. In order to prove existence of Financial Debt, the amount and date of default, The Applicant has relied on the following documents:

- a. Copy of the sanction letter dated 26.02.2010 bearing Ref. No. 9044/NP/CREDIT/INDBULLS/2010 issued by Applicant Bank to Principal Borrower.
- b. Copy of sanction letter dated 26.03.2014 bearing Ref. No. 9044/ADV/85/NP/2013
- c. Copy of sanction letter dated 30.08.2016 bearing Ref. No. 356/9044/2016
- d. Copy of cost overrun undertaking dated 21.11.2016 executed by Corporate Debtor in favour of Principal Borrower
- e. Deed of Indemnity dated 28.03.2015
- f. Share Retention and Management Undertaking dated 28.02.2015.
- g. Promoters Deed of Undertaking dated 28.03.2015
- h. General Promoters Deed of Undertaking dated 21.10.2016.
- i. Copy of Loan Recall notice dated 30.09.2020.
- j. Copy of Notice dated 09.06.2021 under Section 13(2) of SARFAESI Act, 2002.
- k. Copy of Reply dated 09.08.2021 to the Notice dated 09.06.2021 under Section 13(2) of SARFAESI Act, 2002.
- l. Copy of Reply dated 18.08.2021 to the objections.
- m. Copy of Communications by Principal Borrower to consortium lenders.
- n. Copy of communications by the Principal Borrower whereby the liability has been admitted by the Principal Borrower.
- o. Copy of Report of Independent Auditor dated 26.06.2020 with respect to the Financials of Corporate Deb Principal Borrower.
- p. Copy of OTS dated 20.09.2021 by Principal Borrower admitting its liabilities.

- q. Copies of various communications by Principal Borrower to Consortium members from 25.11.2020 to 06.04.2021.
- r. Bank Statement of Principal Borrower account.
- s. Copy of Claims filed on 23.08.2023 by the Applicant Bank.
- t. Copy of OTS offer dated 23.11.2023 by Principal Borrower.
- u. Copy of Proposal from Promoter of Principal Borrower dated 17.04.2025.
- v. Copy of statement of account duly certified under Bankers Book Evidence Act along with the certificate under Section 2A (b) of Bankers Books Evidence Act and Section 63 of Bharatiya Sakshya Adhiniyam, 2023 along with Certificate.

4. SUBMISSIONS OF THE RESPONDENT/CORPORATE DEBTOR:

- i. It is submitted that in the T.A. No. 360 of 2022, the Applicant has not made the Respondent herein a party. In fact, in the aforesaid T.A. No. 360 of 2022, which arises from the same cause of action involving the same project for which the instant application has been filed, the Applicant has failed to mention any details/ particulars at all about the purported Deeds of Guarantee executed by and between the Applicant and Respondent. The averments pertaining to any corporate guarantee executed by the Respondent-REL in favour of the Applicant are conspicuous by their absence. In view of the above, the Applicant is estopped from raising new grounds in this application to contend that the Respondent herein is also a corporate guarantor to the facilities availed by STPL for its Sinnar Project, and the present proceedings are nothing but an afterthought and an abuse of process of court.
- ii. It is submitted that no document has been annexed by the Applicant to show that there was ever any Corporate Guarantee advanced by the Respondent herein or that there was ever any intent to advance any corporate guarantee to the Applicant for the Sinnar Project. Reliance has been placed on ***Pooja Ramesh Singh v. State Bank of India & Anr., Company Appeal (AT) (Ins.) No. 329 of 2023***, wherein it was held by the Hon'ble NCLAT that Loan Agreement with Principal Borrower and the Bank as well as Deed of

Guarantee between the Bank and Guarantor are two different transactions and the Guarantor's liability must be read from the Deed of Guarantee. However, a Deed of Guarantee in the present list is conspicuous by its absence.

- iii.** Furthermore, it is submitted that the Principal Borrower STPL is already undergoing CIRP vide CP(B)/2561/ND/2019, titled Shapoorji Pallonji and Co. Pvt. Ltd. v. Sinnar Thermal Power Ltd., wherein the Applicant has already filed its claims with the CoC of STPL so constituted. The entire claims of Rs. 2,70,24,81,122.23/- have been admitted by the Resolution Professional of STPL and the Applicant has a 1.70% share in the CoC of STPL.
- iv.** It emerges that no reliance could be placed by the Applicant on the five agreements to contend that the Respondent-REL stood as a corporate guarantor to the facilities availed by STPL because: -
- a)** Two agreements, being the Deed of Indemnity-cum-Undertaking dated 28.03.2015 and the Promoters Deed of Undertaking dated 28.03.2015 pertain to a completely different project which is not the subject matter of the present proceedings, and are hence not of any assistance to the Applicant;
 - b)** The General Promoters Deed of Undertaking dated 21.11.2016 was limited to, inter alia, the Respondent-REL bearing any additional capital costs or other monies payable to the Project contractors against settlement of any claims beyond Rs. 150 crores from their own sources without recourse to the Lenders / Lenders Agent;
 - c)** The Share Retention and Management Undertaking dated 28.02.2015 only obliged the Respondent-REL to ensure that management control is retained by the promoters of REL, which has admittedly been done in the instant matter since it is not the case of the Applicant that management control has been wrested from the Promoters;
 - d)** The Cost Overrun Deed of Undertaking dated 21.11.2016 is expressly limited to the Applicant infusing further equity in the Project to meet the Cost Overrun (if any) in the Project, and it is not the case of the Applicant that the Respondent-REL has not infused further equity in the Project;

- e) No document/agreement / undertaking has been placed on record to categorically and unequivocally contend that the Respondent-REL agreed to stand/ intended to stand as a Corporate Guarantor for the facilities availed by STPL for the Sinnar Project;
- f) Therefore, in the absence of any document to demonstrate that the Respondent-REL either stood as a corporate guarantor to facilities availed by STPL or intended to stand as a corporate guarantor, the present proceedings are devoid of the essential ingredient of a valid and subsisting "contract of guarantee", as envisaged under Section 126 of the Indian Contract Act, 1872. In view of the above, it is submitted that the present proceedings initiated by the Applicant are an abuse of process of law aimed at harassing and extorting the Respondent-REL.
- g) The fact that the Recall Notice dated 30.09.2020 was served upon STPL and not the Respondent-REL, coupled with the fact that the Applicant initiated two separate proceedings before the Hon'ble DRT as also this Hon'ble Tribunal without any averment or document to show that the Respondent-REL stood as a corporate guarantor to STPL (where the Applicant had not even made REL a party to the DRT proceedings) all goes to show that the Applicant was well aware of the fact that REL had not stood as a guarantor to STPL and the present proceeding has been filed merely as an afterthought with the intention to harass and extort the Respondent. In view of the above, it is submitted that the Applicant is now estopped from initiating any proceedings against the Respondent-REL, in view of the categorical acquiescence of its rights by the Applicant.
- h) The Applicant was not a signatory to any of the abovementioned Agreements / Undertakings since the same were entered into between, inter alia, the Respondent-REL and Power Finance Corporation (acting as the Lenders Agent). In this view of the matter the Applicant, if at all it was able to make out a case for initiation of CIRP of the Respondent-REL., was required to initiate the instant proceedings only through the Lenders Agent and could not have initiated an Independent Enforcement Action against the Respondent-REL, more so in view of the express and

categorical bar in place under the Master Intercreditor Agreement dated 21.11.2016 which clarified the rights, duties and obligations of the Lenders inter se.

- v. It is submitted that as per the stipulations in the Master Intercreditor Agreement dated 21.11.2016 between, inter alia, Power Finance Corporation, erstwhile Syndicate Bank (now Canara Bank) and other 16 creditors of STPL, a detailed and exhaustive process was put in place to ensure that any enforcement action against the corporate debtor(s) by one of the creditors may not affect the possibility of recovery of dues by the other creditors.
- vi. The Master Intercreditor Agreement specifically provided that the Lenders would ensure that any enforcement action taken against the borrower would only be possible after the Lenders had consulted with each other.
- vii. The Applicant has not disclosed whether the procedural requirements stipulated under the Master Intercreditor Agreement dated 21.11.2016 have been complied with. The Applicant was obliged to ensure that any enforcement action undertaken by it would not affect the ability of other Lenders to affect recovery of their dues, and the Lenders had decided amongst themselves that they would ensure that the Enforcement Action would be enforced by the same method.
- viii. It is further submitted that any invocation of security was to take place by the security trustee upon written instructions of the lenders in the interest of the lenders as a whole.
- ix. The actions of the Applicant are against the express stipulations of the Master Intercreditor Agreement read with the Master Security Trustee Agreement, both dated 21.11.2016.
- x. Reliance has been placed on the decision of the Hon'ble Supreme Court in ***Civil Appeal No. 129 of 2023 titled IDBI Bank Ltd. v. Rakshit Dhirajlal Doshi.***
- xi. It is a settled law that IBC is not a recovery proceeding where because the money or part of it has not been paid, the party may come to the Adjudicating Authority for the recovery of the amount. Reliance has been placed on ***M/s. Invent Asset Securitization and Reconstruction Pvt. Ltd. v. M/s. Girnar***

Fibres Ltd. [Civil Appeal No. 3033 of 2022], Swiss Ribbons v. Union of India in W.P.(C) No. 99 of 2018 and Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353.

- xii.** The Applicant in Part IV of the instant Application has mentioned total outstanding amount due towards the Applicant as Rs. 202,03,39,436.491 (Rupees Two Hundred Two Crores Three Lakh Thirty-Nine Thousand Four Hundred Thirty-Six and Forty-Nine Paisa) as on 30.09.2020, and interest thereon. It is submitted that the Applicant has failed to furnish a detailed calculation chart and thereby the claim of the Applicant is unsubstantiated, exorbitant, and thus, the same is liable to be rejected at the outset.
- xiii.** It is further submitted that the present application is barred by limitation. That, the account of the Principal Borrower-STPL was declared as NPA by Applicant on 28.09.2017, while the present application has only been filed on 28.02.2025, after a delay of more than 8 years from the date on which the account of STPL was declared as NPA. It is further submitted that the Applicant is purportedly relying on Letters/ Offers of One Time Settlement issued by STPL and RattanIndia Power Ltd. to contend that acknowledgement of debt would constitute a fresh cause of action. However, it is apt to mention herein that none of the Letters / Offers of OTS were advanced by the Respondent-REL. Furthermore, reliance is also placed on the conduct of the Applicant itself. In this regard, it is submitted that the Applicant filed T.A. No. 360 of 2022 before the Hon'ble DRT on 06.10.2020, where the Respondent REL was not made a party, and no averment / allegation of the Respondent being the purported corporate debtor was raised by the Applicant.
- xiv.** It is also submitted that thereafter, till 28.02.2025, despite participating in the proceedings pending before this Hon'ble Tribunal, both in CP(IB) No. 2561/ND /2019 (which, to reiterate, remains pending and where the claims of Applicant have been admitted) and CP(IB) No. 567 /ND /2022 (which was dismissed by this Hon'ble Tribunal by way of its Order dated 26.02.2024), no proceeding was initiated by the Applicant against the Respondent for a period of more than five years.

5. SUBMISSIONS OF THE APPLICANT/FINANCIAL CREDITOR VIDE

REJOINDER:

- i.** It is submitted that the Respondent stood as a Guarantor and has given various undertakings to the Lender of the Term Loan including that it shall bring/infuse further equity / fund to meet the cost overrun as approved by the Lender, thereby clearly standing as guarantee to the facilities availed by the Borrower.
- ii.** The obligation in respect of the guarantee is on debt payable to the Petitioner. The guarantee undertaken by the Respondent herein falls within the parameter of debt as defined under Section 3(11) of IBC
- iii.** The Applicant has claim over the amount against the Corporate Guarantor which has been duly accepted by the Respondent vide agreement dated 21.11.2016 through his authorized Signatory, Mr. Sameer Taneja. The undertaking was also given by the Respondent along with other Guarantors.
- iv.** The Respondent has been part of all the Agreements which has been executed during the time of sanction of the facilities which was made available to the Borrower. The Respondent in lieu of the facilities availed has executed the documents in favour of the Bank which are as follows:
 - a.** The cost overrun undertaking dated 21.11.2016.
 - b.** Indemnity cum undertaking dated 28.03.2015
 - c.** Share retention and Management undertaking dated 28.02.2015
 - d.** Promoters deed of undertaking dated 28.03.2015
 - e.** General Promoters deed of undertaking dated 21.10.2016
- v.** It is submitted that the notice under Section 13(2) of the SARFESAI was issued on 09.06.2021 which was not replied by the Respondent despite receiving the same. The notice clearly mentions that the Respondent has guaranteed the payment on demand of all the money and discharge of obligation and liability owing to or incurred to the secured guarantor by the Borrower for credit facility with interest thereon.
- vi.** It is submitted that there is a breach of COR Agreement. The perusal of the documents executed by the Respondent herein clearly establishes the fact that Respondent stood as Guarantor to the facilities availed by the Principle

Borrower, M/s Sinnar Thermal Power Ltd which has not been controverted till date except in the reply to the Section 7 Petition filed by the Applicant herein. The Respondent has relegated itself to the default clause under the Cost overrun deed of Undertaking dated 21.11.2016.

- vii.** It is submitted that the present Application is well within the limitation period, that after the account being declared NPA on 28.09.2017 there are various communications by the Principal Borrower whereby the liability has been admitted by the Principal Borrower. It is submitted that the extension of period of limitation due to the said acknowledgment and applicability of Section 18 of the Limitation Act, 1963 is well settled law by the various judicial pronouncements of the Hon'ble Supreme Court of India. Reliance has been placed on matter of ***Dena Bank (now Bank of Baroda) vs C. Shivkumar Reddy and Anr., Civil Appeal No. 1650 of 2020.***
- viii.** The Adjudicating Authority only has to ascertain the existence of debt and default at the time of admission of an application under section 7 of the IBC, 2016.
- ix.** The Applicant while not disputing the factual narration regarding the classification of the account of Sinnar Thermal Power Limited ("STPL") as a Non-Performing Asset ("NPA") on 28.09.2017 and the filing of O.A. No. 72 of 2021 (renumbered as T.A. No. 360 of 2022) before the Hon'ble Debt Recovery Tribunal-III, Delhi, categorically denies the Respondent's implication that the pendency of the said recovery proceedings in any way negates or undermines the validity, maintainability, or bona fides of the present Application under the Insolvency and Bankruptcy Code, 2016. It is specifically denied that the filing of the said T.A. precludes the Applicant from initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The remedy under the IBC is distinct, independent, and available concurrently with other legal remedies.
- x.** The Applicant has duly annexed the executed Deeds of Guarantee and other relevant loan and security documents that clearly establish the Respondent's role and liability as a corporate guarantor in respect of the financial facilities availed by STPL for the Sinnar Project.

- xi.** The undertakings are not merely collateral or ancillary in nature but impose binding financial and contractual obligations upon, the Respondent, including obligations to service the debt and ensure repayment. Therefore, the Respondent's contention that it is not a corporate guarantor or that the documents do not evidence such status is baseless, misconceived, and contrary to the clear terms of the executed instruments.
- xii.** It is further submitted that the Cost Overrun Deed of Undertaking must be read in the context of the overall financing structure, inter-creditor arrangements, and consortium lending framework under which the financial assistance was extended to Sinnar Thermal Power Limited ("STPL"), and in which the Applicant was a participating lender.
- xiii.** The commitments undertaken by the Promoters therein including REL indicate a clear assumption of financial responsibility toward the lenders, the benefit of which extends to all participating creditors, including the Applicant. Therefore, the Respondent's claim that the said Deed of Indemnity-cum-Undertaking dated 28.03.2015 does not disclose any form of corporate guarantee or that it is irrelevant to the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016, is untenable, misleading, and denied in its entirety.
- xiv.** It is submitted that the Master Intercreditor Agreement, entered into amongst various creditors of Sinnar Thermal Power Limited ("STPL"), including the Applicant, was intended solely to facilitate coordinated action among lenders and did not in any manner dilute, waive, or fetter the statutory and contractual rights of any individual lender, including the right to proceed against guarantors or initiate separate proceedings for recovery.
- xv.** There is acknowledgment of debt by the Principal borrower in the present case as latest as 17.04.2024 so the question of petition being barred by limitation does not arise. It is submitted that the Principal borrower made several requests from time to time to extend the time for repayment and also acknowledged its liabilities through various communications dated 24.11.2020, 27.11.2020 14.01.2021, 29.01.2021, 03.03.2021, 12.03.2021, 22.03.2021, 06.04.2021. However, no payment was made. It is pertinent to

mention that the liabilities toward the Applicant Bank/Financial Creditor has also been duly acknowledged by the Principal Borrower, in its financial statements for the year ended 31.03.2019 and 31.03.2021. That the independent Auditor Report dated 26.06.2020 has duly authenticated the default in part of Principal Borrower towards the consortium Banks. On 28.11.2023, the Principal Borrower issued a letter to the lenders, including Applicant Bank with respect to "Alternate Proposal for operationalization of Plant-Sinnar Thermal Power Limited (1350 MW)." On 17.04.2024, the Promotor of the Principal Borrower issued a letter to the lenders, including Applicant Bank with respect to "Proposal for settlement of the financial debt of Sinner Thermal Power Limited".

6. ANALYSIS AND FINDINGS:

- i.** We have heard the Ld. Counsel on behalf of the Applicant/Financial creditor and Corporate Debtor and further perused the averments made in the Application, Reply filed by the Corporate Debtor and Rejoinder by the Financial Creditor.
- ii.** The present Application has been filed by Canara Bank, the Applicant under Section 7 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against RattanIndia Enterprises Limited on the ground that the Corporate Debtor, alleged to be a Corporate Guarantor of Sinnar Thermal Power Limited i.e. Principal Borrower, has defaulted in payment of financial debt amounting to Rs. 3,72,35,67,407.77/.
- iii.** It is the case of Applicant that the Principal Borrower availed multiple credit facilities aggregating to Rs. 144.40 crore from a consortium of banks led by Power Finance Corporation, in which the Applicant was a member. The Principal Borrower's account was classified as NPA on 28.09.2017, followed by Loan Recall and SARFAESI notices. The Applicant contends that the Respondent stood as a Corporate Guarantor by virtue of various undertakings and documents executed contemporaneously with the loan sanctions such as the Cost Overrun Deed of Undertaking (21.11.2016), Deed of Indemnity-cum-Undertaking (28.03.2015), Share Retention and Management Undertaking

(20.02.2015), and Promoters' Deeds of Undertaking (28.03.2015 and 21.11.2016). According to the Applicant, these instruments, read collectively, evidence the Respondent's unequivocal obligation to ensure repayment of the facilities and therefore amount to a corporate guarantee within the meaning of Sections 3(11) and 5(8) of the Code. It is further submitted that the claim is within limitation as there have been repeated acknowledgements of debt and OTS proposals by the Principal Borrower and its promoters, the latest being on 17.04.2024.

- iv. The Respondent, on the other hand argues that the entire Application proceeds on an erroneous assumption that the Respondent ever stood as a guarantor to the credit facilities of STPL. It has been submitted that no Deed of Guarantee was ever executed by the Respondent in favour of the Applicant, nor is any such document annexed to the petition. The Respondent points out that even in the proceedings before the Debt Recovery Tribunal (T.A. No. 360 of 2022), arising from the same loan transactions, the Applicant did not implead the Respondent nor assert the existence of any corporate guarantee which estops the Applicant from now asserting otherwise. The Respondent submits that the undertakings relied upon are in the nature of promoters' cost-overrun undertakings, limited to infusion of equity or retention of management control, and not contracts of guarantee as defined under Section 126 of the Indian Contract Act, 1872.
- v. It is the case of the Respondent that these documents were executed with Power Finance Corporation, and that the Applicant was not a party to them. Moreover, any enforcement action had to comply with the Master Intercreditor Agreement (21.11.2016) and the Master Security Trustee Agreement, which mandate collective action by lenders and prohibit unilateral proceedings. It is therefore contended that the present proceedings are an afterthought, contrary to inter-creditor covenants, and not maintainable in law. The Respondent has also raised objections regarding limitation and absence of debt calculation.
- vi. From the record, it is evident that the Applicant has relied on various undertakings and indemnity documents executed by promoters and group

entities; however, none of these documents constitute, in form or substance, a Deed of Guarantee.

- vii. A contract of guarantee under Section 126 of the Indian Contract Act, 1872, necessarily requires a tripartite agreement between the creditor, the principal debtor, and the surety, whereby the surety undertakes to discharge the liability of the principal debtor upon default. No such agreement has been produced.
- viii. The documents relied upon by the Applicant namely the Cost Overrun Undertaking, Share Retention Undertaking, and Promoters' Undertakings merely oblige the Respondent to infuse equity, retain control, or manage project implementation. These are commercial undertakings, and not financial guarantees, and cannot be equated with a "debt" as defined under Section 3(11) or a "financial debt" under Section 5(8) of the Code.
- ix. At this juncture, it would be relevant to refer to the Hon'ble NCLAT in ***Pooja Ramesh Singh v. State Bank of India & Anr., Company Appeal (AT) (Ins.) No. 329 of 2023***, wherein it has held that the liability of a Guarantor can arise only from the terms of the Deed of Guarantee. In the absence of such a document, no obligation in the nature of a financial debt can be inferred or implied. Applying this settled principle, the absence of any executed Deed of Guarantee in favour of the Applicant herein is contrary to its claim.
- x. The plea of limitation does not hold any ground when there is no Deed of Guarantee. The cases relied upon by the Applicant are not applicable to the present case and are distinguishable on facts. The Applicant's reliance on the same does not advance its case.
- xi. It is well settled that at the stage of admission under Section 7, this Adjudicating Authority is only to ascertain whether there exists a financial debt and whether default has occurred as laid down in ***Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407***.
- xii. This Adjudicating Authority is of the considered opinion that no financial debt is established as due from the Respondent to the Applicant, in absence of any Deed of Guarantee or other enforceable instrument creating a debt obligation.

Consequently, the basic ingredients of Section 7 of the Code i.e. existence of financial debt and default are not satisfied against the Respondent.

- xiii.** In view of the foregoing, this Adjudicating Authority is of the considered view that the present Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 is not maintainable.
- xiv.** Accordingly, the present Application bearing **CP (IB) 204 ND 2025** is **dismissed**.

No order as to costs.

-SD/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (JUDICIAL)