

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1964 of 2025

[Arising out of Order dated 09.12.2025 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court – IV), in C.P. (IB) No.317/ND/2025]

IN THE MATTER OF:

Rajesh Kaimal
Suspended Director of
Equinox India Developments Ltd. ...Appellant
(Now known as Embassy Developments Ltd.)

Versus

Prabhat Ranjan Singh
Resolution Professional of
Equinox India Developments Ltd.
(Formerly known as Indiabulls Real Estate Ltd.) & Anr. ...Respondents

Present:

For Appellant : Mr. Rakesh Diwevdi, Mr. Arun Kathpalia and Mr. Abhijeet Sinha, Sr. Advocate with Mr. Ritesh Kumar, Mr. Sumesh Dhawan, Mr. Siddharth Joshi, Mr. Shubham Madaan, Mr. Ujjwala Gupta, Mr. Eklavya Diwevedi and Mohd. Yasir, Advocates.

For Respondents : Mr. Abhinav Vashist, Sr. Advocate with Ms. Anju Jain, Mr. Hitesh Sachar, Ms. Rifat Tohid and Ms. Abhilasa, Advocates for R-2.

Mr. Prabhat Ranjan Singh, Advocate for R-1/RP.

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal by a suspended director of the corporate debtor has been filed challenging the order dated 09.12.2025 passed by the adjudicating authority (National Company Law Tribunal, New Delhi Bench, Court – IV) admitting a Section 7 application (C.P. (IB) No. 317/ND/2025) filed by the

Canara Bank. Appellant aggrieved by the said order has come up in this appeal.

2. Brief facts of the case giving rise to the appeal are:

- i. A Rupee Term Loan of Rs. 100 crore was sanctioned by the financial creditor to Principal Borrower- Indiabulls Realtech Ltd., now M/s. Simar Thermal Power Limited on 26.02.2010, Term Loan of cost overrun of Rs.15.57 crore dated 26.03.2014 and Rs.28.83 crore dated 30.08.2016 was also extended totalling to Rs.144.4 crore.
- ii. A corporate guarantee dated 30.06.2010 was extended by India Bulls Real Estate Limited (subsequently M/s. Equinox Development Ltd., the corporate debtor) and India Bulls Power Limited who subsequently became Rattan India Enterprises Limited. A guarantee was extended to the Financial Facilities extended by virtue of Facility Agreement dated 30.06.2010. After the aforesaid guarantee dated 30.06.2010, a scheme of arrangement was approved by the Delhi High Court, whereas, the power business of the corporate debtor was demerged and transferred to Rattan India Enterprises Limited.
- iii. The corporate guarantee was executed on 11.01.2012 between Rattan India Enterprises Ltd., Rattan India Power Ltd. and IDBI Trusteeship Services Ltd. substituting the earlier guarantee and releasing the corporate debtor from its obligation to infuse equity share capital in the project being developed by principal borrower.

- iv. The cost overrun undertaking was executed by corporate debtor in favour of financial creditor on 21.11.2016. Loan account of principal borrower were classified as Non-Performing Asset (NPA) on 28.09.2017.
- v. On 30.09.2020, financial creditor issued a recall notice to the principal borrower, corporate debtor and Rattan India Power Ltd. invoking the alleged corporate guarantee dated 30.06.2010 and demanding payment of Rs.202,03,39,436/- as on 31.07.2020. The notice was also issued to corporate guarantor namely M/s. India Bulls Real Estate Limited and M/s. Rattan India Power Ltd.
- vi. OA No. 72/2021 was filed by financial creditor before the Debt Recovery Tribunal (DRT) against the principal borrower as well as corporate debtor and M/s. Rattan India Power Ltd.
- vii. A notice under Section 13(2) of SARFAESI Act dated 09.06.2021 was also issued by the financial creditor to principal borrower and corporate guarantors. Principal borrower replied to 13(2) notice on 09.08.2021. Principal borrower also submitted an One-Time Settlement (OTS) proposal on 20.09.2021.
- viii. An application under Section 7 was filed by Canara Bank against the corporate debtor, C.P. (IB) No.317/2025 giving details of Financial Facilities of Rs.144.40 crore and the total amount due of Rs.202,03,39,436/- as on 31.07.2020. As on 30.12.2024, total amount of Rs.372,35,67,407/- was mentioned. Declaration of NPA as principal borrower dated 28.09.2017 and recall notice dated 30.09.2020 was

pleaded in the Section 7 application. The notice was issued by the adjudicating authority. Corporate debtor filed its reply to the Section 7 application. Corporate debtor in its reply raised preliminary objections to the application. It was pleaded that recall notice having been issued on 30.09.2020 for recalling the loan and directing the payment to be made within three days, the application is barred by Section 10A.

- ix. It was further pleaded that Guarantee Deed dated 30.06.2010 and cost overrun Deed of Undertaking dated 21.11.2016 is not contract of guarantee. It was pleaded that in the application, Bank has suppressed the material facts that the Guarantee dated 30.06.2010 was subsequently by subsequent Guarantee Deed dated 11.01.2012, the corporate debtor as guarantor was discharged and the said subsequent guarantee dated 11.01.2012 have been concealed by the financial creditor. The obligation of the corporate debtor was only to infuse equity/funds in project as per the guarantee dated 30.06.2010 and by subsequent guarantee, guarantee was undertaken by two other corporate guarantors discharging the corporate debtor and corporate debtor's liability was only when new guarantors failed to discharge their obligation. It was pleaded that application filed by the Bank is abuse of process and has been initiated by the Bank with malicious intent for purpose other than for the resolution of the insolvency of the corporate debtor.

- x. Rejoinder affidavit was filed by the financial creditor to the reply. In the reply, the subsequent deed executed on 11.01.2012 was not denied but it was pleaded that corporate debtor is still has obligation under the Guarantee Deed dated 11.01.2012.
 - xi. Adjudicating authority heard the parties and by the impugned order has admitted Section 7 application. It is also relevant to notice that another Section 7 application was filed by the Canara Bank against other corporate guarantor of the principal borrower Rattan India Enterprises Ltd. being C.P. (IB) No.204/ND/2025, which Section 7 application was dismissed by the same bench by order of the same day dated 09.12.2025.
3. The Appeal was heard by this Tribunal on 11.12.2025 on which date, following order was passed:-

“11.12.2025: This appeal has been filed against the order dated 09.12.2025 passed by the NCLT, New Delhi – IV admitting section 7 application filed by the Canara Bank.

2. Ld. Counsel for the Appellant challenging the order submits that the Appellant was stated to be guarantor and guarantee was invoked by letter dated 30.09.2020 and the Appellant was required to pay the amount within three days, hence, the default occurred during the 10A period and the application was clearly barred by 10A of IBC and could not have been admitted.

3. It is further submitted that the guarantee has been invoked on 20.09.2020 and the application filed in January, 2025 is also barred by limitation.

4. It is further submitted that initially the guarantee which was given on 30.06.2010 was substituted by subsequent deed of the year 2012 where the appellant was not the principal obliger and his guarantee with respect to default in equity was on failure of the principal guarantor.

5. It is submitted that there was no guarantee with regard to the debt repayment and initiation of Section 7 application by the Bank for default in repayment of loan is wholly without jurisdiction and was clearly barred by time.

6. Ld. Counsel for the Appellant submits that in the deed of the year 2012 where the Appellant was one of the guarantors, on the same day another CP (IB) No. 204/ND/2025 filed by the Bank against Ratan India Enterprises Ltd. has been dismissed by the judgment on the same day and in the said judgment the deed of year 2012 has been read as not constituting any financial debt. It is submitted that the Adjudicating Authority committed an error in admitting the Section 7 application.

7. Mr. Virender Ganda, Sr. Adv. appearing for the Respondent refuting the submissions submits that all relevant documents which have been referred to in the impugned order in para 8 has not been brought on the record. The Appellant is required to bring all material which were there before the NCLT. He submits that

default was committed on 20.09.2017, hence, the application was not barred by 10A. It is submitted that there are other documents and additional documents where the obligation was taken by the Appellant to pay on default of the debt. It is submitted that 2010 was not only the guarantee which was relied by the Bank.

8. Submissions made by the Ld. Counsel for the parties needs consideration. Prima facie we are of the view that when the guarantee was invoked on 30.09.2020 the application was hit by Section 10A and the Adjudicating Authority's observation in para 14 of the order that the date of default is 20.09.2017 cannot be a reason for rejecting the submissions on the basis of section 10A. 20.09.2017 was the date of default by the principal borrower and the copy of the notice by which guarantee was invoked has already been filed at Annexure A7 where both the Appellant and the Ratan India were mentioned as item no. 2 and 3 and principal borrower in item no. 1 in para 24 of the notice, following was stated:-

"24. That my client also invoke the guarantee of you the addressee no. 2 & 3 for repayment of amount of Rs. 202,03,39,436.49/- (Rs. Two Hundred Two Crore Three Lakh Thirty-Nine Thousand Four Hundred Thirty-Six and Forty Nine Paise Only) due and payable as on 31.07.2020. I hereby call upon you the addressee no. 2 to 4 to make payment of Rs. 202,03,39,436.49/- (Rs. Two Hundred Two Crore Three Lakh Thirty Nine Thousand Four Hundred Thirty Six and Forty Nine Paise Only) due and payable as on 31.07.2020

along with future and pendent elite interest, cost and other charges to my client within 3 days from the receipt of this notice, failing which my client shall be constrained to take appropriate action against you the addressees before the competent court of law. You are further liable to pay a sum of Rs.11,000/- towards cost of this legal notice.”

9. Ld. Counsel for the Respondent submits that there is another invocation on 09.06.2021.

10. We are of the view that when the guarantee was invoked, the cause of action arose on 30.09.2020 and subsequent notice or invocation shall not affect on the date of default.

11. Issue notice.

12. Let the reply be filed within three weeks. Rejoinder, if any, be filed within two weeks thereafter.

13. List this appeal on 22nd January, 2026.

14. In the meantime, the order dated 09.12.2025 shall remain stayed.

15. Ld. Counsel for the Bank submits that they are filing the appeal against another order passed by the same bench.”

4. We have heard Shri Rakesh Dwivedi, Shri Arun Kathpalia and Shri Abhijeet Sinha, Learned Senior Counsel for the Appellants, Shri Abhinav Vasisht, Learned Senior Counsel with Ms. Anju Jain and Mr. Hitesh Sachar, Learned Counsel for the Financial Creditor and Shri Prabhat Ranjan Singh, Learned Counsel for the Resolution Professional.

5. Learned Counsel for the Appellant challenging the impugned order submits that the Adjudicating Authority committed error in entertaining Section 7 application filed by the Financial Creditor which had no basis for initiating any CIRP proceeding against the Corporate Debtor. Learned Counsel for the Appellant submits that the Corporate Debtor (earlier known as Indiabulls Real Estate Limited) was a corporate guarantor for which corporate guarantee was issued by Corporate Debtor on 30.06.2010 along with another Corporate Guarantor- Indiabulls Power Limited. The Corporate Guarantee given by Corporate Guarantor was only to punctually infuse and bring equity share capital in accordance with the Facility Agreement and Share Subscription, Retention Undertaking Agreement. The guarantors were only obliged towards infusion/contributing to the share capital from time to time in the project. The guarantors never undertook to discharge the liability of principal borrower which is clear from Deed of Guarantee. It is submitted that under Scheme of Arrangement approved by the Delhi High Court, the power business of the Corporate Debtor was demerged to company namely— Indiabulls Power Limited (subsequently known as Rattan India Power Limited). The resulting company constituted as per scheme of arrangement was Indiabulls Infrastructure and Power Limited (subsequently known as RattanIndia Infrastructure Limited). All rights and liabilities of the Corporate Debtor on demerging its power business were transferred to RattanIndia Enterprises Limited. Another guarantee was executed on 11.01.2012 whereas the new guarantors replaced the Appellant were Indiabulls Power Limited and Indiabulls Infrastructure and Power Limited. The Corporate Debtor was

discharged from its guarantee undertaken on 30.06.2010. In Section 7 application which was filed by the Financial Creditor, the Deed of Corporate Guarantee dated 11.01.2012 whereas the new guarantors replaced the Appellant was Indiabulls Power Limited and Indiabulls Infrastructure and Power Limited was not mentioned. The Corporate Debtor was discharged from its guarantee undertaken on 30.06.2010. In Section 7 application which was filed by the Financial Creditor, the Corporate Guarantee Deed dated 11.01.2012 was suppressed. It is submitted that under the Guarantee Deed dated 30.06.2010, there was no obligation to Corporate Debtor to pay the debt of principal borrower. The account of the principal borrower was declared NPA on 28.09.2017, however, the guarantee of the Corporate Debtor and another corporate guarantor was invoked by recall notice dated 30.09.2020. The notice dated 30.09.2020 demanded the payment of Rs.202,03,39,436/- which was due on the principal borrower, the Corporate Debtor had never undertaken to pay the principal debt of the principal borrower, invocation of guarantee was wholly unauthorised and could not be basis for filing any Section 7 application against the Corporate Debtor. It is submitted that the Corporate Guarantee was invoked on 30.09.2020 which was period covered by Section 10A. In the reply which was filed by the Corporate Debtor to Section 7 application all relevant facts were pleaded including that Corporate Debtor is not obliged to pay the debt of principal borrower and only obligation was to infuse equity in the project. Further, the loan recall notice i.e. invocation of guarantee was hit by Section 10A. Suppression of relevant facts was also pleaded. Adjudicating Authority, however, without adverting to

relevant clauses of the guarantee dated 30.06.2010 has admitted Section 7 application. Adjudicating Authority also committed error in overruling the argument on basis of Section 10A relying on the date of default 28.09.2017 which was NPA declaration of principal borrower. It is further contended that another Section 7 application was filed by the Financial Creditor against other corporate guarantor- RattanIndia Enterprises Limited, which was other corporate guarantor to the principal borrower- M/s. Sinnar Thermal Power Limited. It is submitted that the CP (IB) No. 204/ND/2025 was filed by the Financial Creditor against RattanIndia Enterprises Limited, another Corporate Guarantor which application was dismissed by judgment of the same date dated 09.12.2025 passed by the same bench of the NCLT. In the order dated 09.12.2025 in CP (IB) No. 204/ND/2025, the very Bench of the NCLT took the view that there was no financial debt on the basis of the same corporate guarantee. The contrary judgment has been given in the impugned order in the present appeal admitting Section 7 application which shows clear non-application of mind and illegality on the part of the NCLT.

6. Shri Vashisht, Learned Senior Counsel appearing for the Financial Creditor refuting the submissions of the Counsel for the Appellant submits that the Guarantee Deed dated 30.06.2010 obliged the Corporate Debtor to pay the debt of the principal borrower, the liability of guarantor is co-extensive with the principal borrower. It is submitted that the default by principal borrower having been committed, declaration of the NPA in 2017 was made, the application was not barred by Section 10A. Referring to the subsequent Deed of Guarantee dated 11.01.2012, Counsel submits that the Corporate

Debtor was still obliged to discharge its obligation as per Guarantee Deed dated 30.06.2010, hence, the Corporate Debtor continues to be guarantor and Adjudicating Authority has rightly admitted Section 7 application. The Corporate Debtor executed various undertaking namely Share Retention & Management Undertaking dated 28.02.2015, Indemnity-cum-Undertaking dated 28.03.2015, Promoters' Deed of Undertaking dated 28.03.2015 and Cost Overrun Undertaking dated 21.11.2016, which obliged Corporate Debtor to fulfil its undertaking to Financial Creditor.

7. We have considered the submissions of the Counsel for the parties and perused the record.

8. From the submissions of the Counsel for the parties, following questions arise for consideration:-

(I) Whether under the Guarantee Deed dated 30.06.2010 the Corporate Debtor was obliged to discharge the debts of principal borrower- M/s. Sinnar Thermal Power Limited?

(II) Whether by subsequent Deed of Guarantee dated 11.01.2012 Corporate Debtor was discharged from its guarantee as guarantor from the guarantee deed dated 30.06.2010 and it undertook only limited obligations?

(III) Whether various undertakings as relied by Financial Creditor including Cost Overrun Undertaking dated 21.11.2016 obliged the Corporate Debtor to discharge financial obligation of Principal Borrower towards lenders?

(IV) Whether Section 7 application filed by the Appellant was barred by Section 10A?

(V) Whether Adjudicating Authority who by its judgment of the same date dated 09.12.2025 in CP (IB) No. 204/ND/2025 which was filed against other Corporate Guarantor of the principal borrower arising out of the same Loan Recall Notice dated 30.09.2020 having rejected Section 7 application holding that there is no financial debt whether Adjudicating Authority ignoring its own judgment of the same date by same Bench could have admitted Section 7 application against the Corporate Debtor the other Corporate Guarantor in Deed of Guarantee dated 30.06.2010?

Question Nos. (I) & (II)

9. Question Nos.(I) and (II) being inter-related are being taken together. The present is a case where a consortium of bank decided to extend financial assistance to the principal borrower- M/s. Indiabulls Realtech Limited (subsequently named as M/s. Sinnar Thermal Power Limited) for establishing a power project located in Village Sinnar, District Nashik, State of Maharashtra. Syndicate Bank (now Canara Bank) which was one of the consortium lenders had extended a term loan facility of Rs.100 Crore by sanction letter dated 26.02.2010 for establishing the power project. Sanction letter dated 26.02.2010 is brought on record as Annexure A-6 to the Appeal which contemplates issuance of corporate guarantee from Indiabulls Power Limited and Indiabulls Real Estate Limited (Corporate Debtor). The obligation

of guarantee was for infusion of equity in a timely manner in the project. It is useful to notice paragraph 30 of the sanction letter which deals with 'pre-commitment conditions'. Paragraph 30 (a) is to the following effect:-

“30) Pre-commitment conditions:

Execution of Financing Agreements by the Lenders shall be subject to the satisfaction Including but not limited to the following:

a) Corporate Guarantee from IPL & IBREL for infusion of equity, in a timely manner in the project and to the effect that any cost overrun of the project to be met from further equity funds to be contributed by IBREL & IPL without recourse to the lenders and project assets: Any overrun in the project cost shall be financed by increase in equity base/preference share capital or by unsecured interest free funds from Sponsors of the borrower. Any servicing of funds from Sponsors would be subordinate to credit facilities availed from the Lenders.”

10. The Corporate Guarantee Deed dated 30.06.2010 was executed by Corporate Debtor as Corporate Guarantor with another Corporate Guarantor- Indiabulls Power Limited. In Corporate Guarantee dated 30.06.2010 nature of Corporate Guarantee has been stated in statement (E) which is to the following effect:-

“E. It is a condition of the Facility Agreement and Share Subscription, Retention and Undertaking Agreement that the Guarantor(s) shall provide a corporate guarantee of the portion of equity envisaged and planned to be contributed by IBREL and IPL in a timely

manner for setting up the Project and also to the effect that any cost overrun of the Project to be met out from further equity/funds to be contributed by the Guarantor(s) without recourse to the Lenders and Project Assets. (The portion of equity committed by the Guarantor(s) for itself as well as Financial Investor for setting up the Project and the funds whatsoever required in the event of cost overrun shall hereinafter be referred to as the "Equity Share Capital")."

11. The 'event of default' has also been defined in following words:-

"Event of Default means the Promoter and/or Financial Investor(s) have failed to perform their obligations towards the Borrower and/or the Project by contributing towards the Equity Share Capital from time to time as envisaged or planned as undertaken by the Guarantor(s) under the Share Subscription, Retention Undertaking Agreement for the implementation of the Project or breach of any of the provisions of this Deed of Guarantee."

12. Para 2 deals with the 'guarantee'. The Guarantor(s) agrees to punctually infuse and bring Equity Share Capital in accordance with the Facility Agreement and Share Subscription, Retention Undertaking Agreement. It is useful to notice paragraph 2 (a), (b) and (c) is as follows:-

"2. THE GUARANTEE

(a) In consideration of the Lenders agreeing to grant the Facilities to the Borrower, the Guarantor(s) hereby agrees to issue this Guarantee in favour of the Security Agent on the terms and conditions contained in this

Deed of Guarantee. The Guarantor(s) agrees to punctually infuse and bring Equity Share Capital in accordance with the Facility Agreement and Share Subscription, Retention Undertaking Agreement.

(b) This Deed of Guarantee is for the Guaranteed Amounts to be brought in by the Guarantor(s) in the form of Equity Share Capital in the Project from time to time in terms of the Facility Agreement and Share Subscription, Retention Undertaking Agreement.

(c) The Guarantor(s) hereby unconditionally, absolutely and irrevocably guarantees, and promises to bring Equity Share Capital in the Project forthwith without demur and upon the written demand of the Security Agent, in accordance with the terms of this Deed of Guarantee.”

13. Clause 10 deals with the ‘payment period’ which provides as follows:-

“10. PAYMENT PERIOD

The Guarantor(s) agrees to infuse/bring the requisite Equity Share Capital in the Project as required at any time under Facility Agreement and Share Subscription, Retention and Undertaking Agreement or any other Financing Documents within 5 days of receipt of the Notice of Demand, without any demur or objection.”

14. As noted above, a scheme of arrangement was approved by Delhi High Court by which power business of the Corporate Debtor was demerged into RattanIndia Enterprises Limited. The rights, liabilities and obligations of the Corporate Debtor were transferred to RattanIndia Enterprises Limited on account of a scheme of arrangement approved by the Delhi High Court on

17.10.2011. A fresh Guarantee Deed was executed by the Corporate Debtor with IDBI Trusteeship Limited by which Corporate Debtor was substituted by new two Corporate Guarantors namely— Indiabulls Infrastructure and Power Limited (now RattanIndia Infrastructure Limited) and Indiabulls Power Limited (now Rattan India Power Limited). The Guarantee Deed dated 11.01.2012 notices the facility agreement and the corporate guarantee dated 30.06.2010 as well as the scheme of arrangement under which all rights, title, benefits, interests and obligations of Corporate Debtor were transferred to IIPL. Clauses (E), (F) & (G) of the Guarantee Deed dated 11.01.2012 reads as follows:-

“(E) It is a condition of the Facility Agreement and the Share Subscription, Retention and Undertaking Agreement that the Guarantor(s) shall provide a corporate guarantee of the portion of equity envisaged and planned to be contributed in a timely manner for setting up the Project and also to the effect that any cost overrun of the Project to be met out from further equity/funds to be contributed by the Guarantor(s) without recourse to the Lenders and the Project Assets. Accordingly, Indiabulls Real Estate Limited ("IBREL") executed a Corporate Guarantee dated June 30, 2010 in favour of the Security Agent for the benefit of the Lenders. (The portion of equity committed by the IBREL/the Guarantor(s) for itself as well as Financial Investor for setting up the Project and the funds whatsoever required in the event of cost overrun shall hereinafter be referred to as the "Equity Share Capital").

(F) Subsequently, pursuant to a scheme of arrangement under Sections 391 to 394 of the Companies Act, 1956 ("Scheme"), the entire shareholding of the Borrower held by IBREL was transferred to IIPL. The Lenders have granted their consent to the Scheme and to the restructuring under the Scheme, including transfer of all rights, title, benefits, interests and obligations of IBREL to IIPL under the Scheme.

(G) The Parties have therefore, subject to the terms of this Deed of Guarantee and in order to release IBREL from its obligations under the existing Corporate Guarantee and to obtain an equivalent guarantee from the Guarantor in favour of the Security Trustee pursuant to the aforementioned scheme, agreed to execute these presents, in the manner hereinafter expressed."

15. Clause (G) clearly mentioned that *"the Parties have therefore, subject to the terms of this Deed of Guarantee and in order to release IBREL from its obligations under the existing Corporate Guarantee and to obtain an equivalent guarantee from the Guarantor in favour of the Security Trustee pursuant to the aforementioned scheme"*. The above clause (G) clearly indicate that the Corporate Debtor was replaced from Guarantee Deed dated 30.06.2010 and new guarantors have taken place. However, Corporate Debtor's obligation continued when certain circumstances which is noticed in paragraph 11. Paragraph 11 is as follows:-

“11. OBLIGATION OF INDIABULLS REAL ESTATE LIMITED TO CONTINUE IN CERTAIN CIRCUMSTANCES

The Parties hereby acknowledge that in terms of the Scheme, all debts, liabilities, loans raised, obligations incurred, duties of any kind, nature or description (including contingent liabilities which arise out of the activities or operations of the power business) of IBREL and relatable to the power business (including the obligations of IBREL under this Guarantee) have been transferred to IIPL from the Effective Date and therefore the Parties are executing this Guarantee to record the same. The Parties further acknowledge that IBREL shall, notwithstanding the Scheme, unless otherwise agreed with the Lenders in relation to the Project, continue to be responsible for fulfilling its obligations under this Guarantee as a Guarantor, in the event that IIPL (which shall be the primary obligor to the Lenders in relation to such obligations) fails to fulfil the same and immediately thereafter, all the obligations of IIPL shall flow to IBREL. For the avoidance of doubt, it is clarified that save as expressly contemplated herein, no obligations in relation to this Agreement shall be retained with or assumed by IBREL following the Scheme and further that the obligations of IBREL under this Agreement shall be only to the extent that the aforesaid obligations are existing obligations of IBREL as on the Effective Date which are transferred to IIPL pursuant to the Scheme.

IBREL hereby agrees, undertakes and accepts that in the event IIPL fails to fulfil its obligations (which shall be

the primary obligor to the Lenders in relation to such obligations) in accordance with the terms of this Guarantee, it shall continue to be responsible for fulfilling its existing obligations under this Guarantee as a Guarantor.”

16. It is relevant to notice that in reply to Section 7 application which was filed by the Corporate Debtor, Corporate Debtor has raised the plea regarding suppression of relevant facts in Section 7 application including suppression of subsequent Guarantee Deed dated 11.01.2012. Reply also clearly pleaded the obligation of the Corporate Debtor in the Guarantee Deed dated 30.06.2010. It was further stated that the obligation of the Corporate Debtor was only towards infusing the equity and cannot be held to be undertaking qualify as a financial debt. It was also clearly pleaded that the Financial Creditor has concealed the relevant facts in Section 7 application. It was also pleaded that the Corporate Debtor stood discharged. It is useful to notice paragraph 4 of the reply which is as follows:-

“4. As will be elaborated in paragraphs hereunder, that present Application filed under Section 7 of the Code, is a gross abuse of the process of law and has been initiated by the Applicant Bank with malicious intent for purpose other than for the resolution of the insolvency and is liable to be dismissed inter alia on account of preliminary objections as raised to the maintainability of the instant Application against the answering Respondent, the alleged Corporate Debtor:

(a) Initiation of CIRP by filing of the answering Application by invoking Section 7 of the Code against answering

Respondent, the alleged Corporate Debtor, is expressly barred by virtue of Section 10A of the Code.

(b) Neither the stated Corporate Guarantee allegedly dated 30.06.2010, nor the subsequent Deed of Undertaking constitutes an agreement(s) or contract(s) of Surety/Guarantee in terms of Section 126 read with Section 128 of the Indian Contract Act, 1872 whereby the answering Respondent agreed and/or contracted factually or legally obligated itself as a Surety/Guarantor to repay any of the stated loans granted to and availed by the said Principal Borrower-STPL.

(c) The present Application is barred by the law of limitation.

(d) The Applicant Bank being the asserted Financial Creditor has approached this Hon'ble Tribunal with unclean hands by intentionally concealing and suppressing material documents and by not disclosing that alleged Corporate Guarantee dated 30.06.2010 sought to be attributed to the answering Respondent and that the obligations attributable to the answering Respondent as contained therein, stood discharged.”

17. It was pleaded that the liability under the Guarantee Deed dated 30.06.2010 of the Corporate Debtor does not constitute a financial debt. It was pleaded that the Corporate Guarantor had only undertaken to infuse equity share capital on notice given by the Financial Creditor. Subsequent Corporate Guarantee dated 11.01.2012 was also specifically pleaded in paragraph 7.10 (a) which is as follows:-

“7.10 Without prejudice to the above, any obligations of answering Respondent as envisaged under the above-mentioned document also in any event, cannot qualify as a Financial Debt as defined under Section 5(8) of the Code and in this regard, the following is submitted:

(a) As would be elaborated hereinafter, a subsequent Corporate Guarantee dated 11.01.2012 came to be executed by Rattan India Enterprises Limited (formerly known as Indiabulls Infrastructure and Power Limited) ("RIPL/IIPL"), RattanIndia Power Limited and the answering Respondent herein in favour of IDBI Trusteeship. This document has been concealed and suppressed by the Applicant Bank in the present Application.”

18. We have already noted the undertaking given by the Corporate Debtor in Corporate Guarantee dated 30.06.2010 which guarantee required infusion of equity capital in accordance with facility agreement and indemnity triggered only if equity is not infused and clause 8(b) required notice of demand to specify the total amount demanded and to be addressed to the Guarantors. It is useful to notice clause 8 (a) & (b) which is as follows:-

“8. CLAIM PROCEDURE

(a) Upon the occurrence of an Event of Default, the Security Agent may, at its absolute discretion, raise a notice of demand upon Guarantor(s) ("Notice of Demand").

(b) The Notice of Demand shall:

- i. be in writing;*
- ii. specify the total amount demanded, rounded off to nearest INR;*
- iii. be addressed to the Guarantor(s);*
- iv. be sent to the address as provided by the Guarantor(s) under clause 9 of this Guarantee;*
- v. be signed by the Security Agent,”*

19. The Corporate Guarantee dated 30.06.2010 in no manner can be said to guarantee by Corporate Guarantor to discharge the debt of principal borrower and guarantee was given only to infuse the equity in the project as per the Facility Agreement. No case has been made out by the Financial Creditor that Corporate Debtor defaulted in infusing the equity, after any notice of demand for infusion of equity is made. In any manner the Corporate Guarantee never contemplated discharge of debt by the Corporate Guarantor. We have also noticed above by subsequent Corporate Guarantee dated 11.01.2012, where two corporate guarantors were substituted and corporate debtor was discharged from its corporate guarantee and only obligation which was therein clause 11 was to discharge/obligation if the substituted corporate guarantor failed to discharge their obligation. Adjudicating Authority has not even looked into the corporate guarantee dated 30.06.2010 nor even noticed the subsequent corporate guarantee dated 11.01.2012 which was pleaded by the Corporate Debtor in the reply, the Corporate Debtor has pleaded in the reply that Financial Creditor has suppressed the said guarantee which was relevant. The order passed by the Adjudicating Authority shows complete non-

application of mind and the conclusion that financial debt is proved has been arrived without even looking into the guarantee deed and nature of guarantee undertaken by the corporate guarantor. We also need to notice Loan Recall Notice dated 30.09.2020. The said notice has been filed by the Appellant as Annexure A-7 to the Appeal. Notice was addressed to the Corporate Debtor as well as RattanIndia Power Limited. Both Corporate Debtor and RattanIndia Power Limited were mentioned as Corporate Guarantors and notice was addressed to principal borrower- M/s. Sinnar Thermal Power Limited. Paragraph 3 of the notice refers to Corporate Debtor which statement that the corporate guarantors has extended their loan amount availed by addressee no.1. In paragraph 9, it is pleaded that addressee nos.1, 2 and 3 executed the corporate guarantee dated 30.06.2010 for security of repayment of amount. In paragraph 23 of the notice, date of NPA was mentioned as 28.09.2017 and amount of Rs.202,03,39,436.49/- by paragraph 24 the guarantee was invoked and Corporate Debtor was asked to make the payment of Rs.202,03,39,436.49/-. Paragraphs 23 and 24 are as follows:-

“23. That my client tried its level best and requested several times to you the addressees through several letters, email and even personal visits and requested for repayment of the loan amount but you the addressees neither paid any heed nor showed any seriousness to the request of my client and all the efforts of my client went in vain, and due to non-payment of you the addressees, your account has been declared NPA on 28.09.2017 and an amount of Rs.

202,03,39,436.49/- (Rs. Two Hundred Two Crore Three Lakh Thirty Nine Thousand Four Hundred Thirty six and Forty Nine Paise Only) due and payable as on 31.07.2020 alongwith future and pendent elite interest, cost and other charges.

24. That my client also invokes the guarantee of you the addressee no. 2 & 3 for repayment of amount of Rs. 202,03,39,436.49/- (Rs. Two Hundred Two Crore Three Lakh Thirty-Nine Thousand Four Hundred Thirty-Six and Forty Nine Paise Only) due and payable as on 31.07.2020.

I hereby call upon you the addressee no. 2 to 4 to make payment of Rs. 202,03,39,436.49/- (Ra. Two Hundred Two Crore Three Lakh Thirty Nine Thousand Four Hundred Thirty Six and Forty Nine Paise Only due and payable as on 31.07.2020 along with future and pendent elite interest, cost and other charges to my client within 3 days from the receipt of this notice, failing which my client shall be constrained to take appropriate action against you the addressees before the competent court of law.

You are further liable to pay a sum of Rs. 11,000/- towards cost of this legal notice.”

20. The above notice clearly indicates that guarantee was invoked by notice dated 30.09.2020 and guarantee referred to and relied was Guarantee Deed dated 30.06.2010. The issuance of notice by asking the guarantor to pay the amount due to the principal borrower is wholly unauthorised and not in

accordance with what guarantors have undertaken in the Deed dated 30.06.2010 as noted above. We, thus, are satisfied that the Corporate Debtor never undertook to pay/discharge any financial debt obligation of the principal borrower and the entire proceeding initiated by the Financial Creditor by issuing Loan Recall Notice dated 30.09.2020 and filing application under Section 7 was wholly misconceived and without any basis. The Financial Creditor without looking into the relevant Guarantee Deed dated 30.06.2010 and Cost Overrun Deed of Undertaking dated 21.11.2016 has come to conclusion that default is committed by the Corporate Debtor. In Part IV of Section 7 application Financial Creditor has referred to the facility of Rs.144.4 Crore extended to the principal borrower. Corporate Guarantee dated 30.06.2010 was relied in Part IV. In Part IV reference to Guarantee dated 30.06.2016, amount to be defaulted and date of default has been mentioned as follows:-

1.	<i>TOTAL AMOUNT OF DEBT GRANTED</i>	
3.	<i>Amount claimed to be in default and the date on which the default occurred.</i>	<i>That the account of the Principal Borrower with the Applicant Bank slipped into NPA on 28.09.2017, and as on 30.09.2020 the Applicant Bank issued Recall Notice upon the Corporate Debtor and as per the said notice the amount in default was Rs. 202,03,39,436.491 (Rupees Two Hundred Two Crores Three Lakh Thirty-Nine Thousand Four Hundred Thirty-Six and Forty Nine Paisa) on 31.07.2020. 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</i>

		<i>Thirty-Nine Thousand Four Hundred Thirty-Six and Forty Nine Paise) which includes Principal, Interest and other charges upto 31.07.2020.</i>
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21. Submission of the Counsel for the Appellant is based on materials on record that Corporate Guarantor never undertook to discharge the outstanding amount of the principal debt and what was undertaken was equity infusion as per the Facility Agreement. As per Loan Recall Notice and Section 7 application, the Corporate Guarantor was liable to pay the outstanding amount which was due on the principal borrower which is misconceived and without any basis. We are constrained to observe that Financial Creditor without appreciating its own documents including Corporate Guarantee Deed dated 30.06.2010 had rush to file Section 7 application which is wholly unauthorised and not maintainable.

Question No. (III)

22. As noted above, Learned Counsel for the Bank has further relied on Share Retention and Management Undertaking dated 28.02.2015, Indemnity-cum-Undertaking dated 28.03.2015, Promoters' Deed of Undertaking dated 28.03.2015 and Cost Overrun Undertaking dated 21.11.2016. Submission of the Appellant is that by virtue of the above undertakings which was executed by the Corporate Debtor, Corporate Debtor was obliged to fulfil the undertaking.

23. The proceeding initiated against the Appellant where on the basis of Recall Notice dated 30.09.2020 which was notice to recall the guarantee issued by the Corporate Debtor. The guarantee which was referred to and relied in the Recall Notice was guarantee dated 30.06.2010. Notice also referred to the Additional Term Loans for Cost Overrun as well as Cost Overrun Facility 1 and Cost Overrun Facility 2 and the security document namely— Cost Overrun Undertaking dated 21.11.2016. We have already noted the details of Guarantee Deed dated 30.06.2010 which was not a guarantee for payment of debts of the principal borrower. We need to notice the Cost Overrun Undertaking dated 21.11.2016 and other undertakings as above.

24. The Financial Creditor in its Section 7 application has also relied on the Cost Overrun Deed of Undertaking dated 21.11.2016 which also need to be noticed. The copy of Cost Overrun Deed of Undertaking is at page 218 of the paper-book in which undertaking Corporate Debtor was also one of the party giving undertaking in favour of Power Finance Corporation Limited. ‘Undertaking’ is contained in paragraph 2.1. Clause (a) deals with RIL, RPL, RRIPL and Individual Sponsor wherein clause (b) deals with IBREL (Corporate Debtor). Clause 2.1 is as follows:-

“2.1 Undertaking

RIL, RPL, Individual Sponsor, RRIPL and IBREL hereby irrevocably and unconditionally acknowledge represent, accept undertake, declare and assure as follows:

a. In relation to RIL, RPL, RRIPL and Individual Sponsor:

(i) they shall (jointly and severally) bring/infuse further equity/funds to meet the Cost Overrun without any recourse to the Lenders, the Project/Project Assets on terms to be approved by the: Lenders' Agent to the Borrower; and

(ii) they shall (jointly and severally) bring/infuse further equity/funds on account of development of bid/performance guarantees and, in such event, shall furnish necessary documentation evidencing source of funds (including certificate from their statutory auditor (if applicable) as may be required by, and acceptable to the Lenders' Agent.

b. In relation to IBREL:

In the event RIL, RRIPL and the individual Sponsor fail to meet their obligations listed in Article 2.1(a) above, it shall immediately (after the expiry of 5(five) days) make good the shortfall in connection with the cost Overrun and, in such event, it shall furnish necessary documentation evidencing source of funds (including from its statutory auditor) as may be required by, and acceptable to, the Lenders' Agent. The obligation of IBREL shall be in force and effect till the COD is achieved.”

25. The undertaking of Corporate Debtor under 2.1 (b) was only in event RIL, RRIPL and the individual Sponsor fail to meet their obligations listed in Article 2.1(a), the Corporate Debtor after the expiry of 5(five) days) was to make good the shortfall in connection with the cost Overrun. When we look into 2.1(a), the obligation is to bring/infuse further equity/funds to meet the Cost Overrun without any recourse to the lender. For Cost Overrun

Undertaking was also in the line of Deed of Guarantee where guarantors have undertaken to bring/infuse equity in the project. In the reply to Section 7 application Corporate Debtor has made all relevant pleadings including that Corporate Debtor was discharged from its guarantee by subsequent Guarantee Deed dated 11.01.2012 and further there was no undertaking to pay the debt of the principal borrower. Adjudicating Authority did not advert to any of the plea raised by the Corporate Debtor in the reply. The order impugned indicates that the Adjudicating Authority after noticing the pleadings of the parties has referred to Corporate Guarantee dated 30.06.2010, Cost Overrun Deed of Undertaking and another documents and has come to the conclusion that applicant has produced the Corporate Guarantee dated 30.06.2010 and Cost Overrun Deed of Undertaking dated 20.11.2016 which on plain collective reading along with all facilities sanctioned by the Bank create an obligation in respect of debt advanced to the principal borrower. The conclusion of the Adjudicating Authority is in paragraph 10.

“10. The first issue is whether a financial debt exists and a default has occurred or not. A corporate guarantee is, by its nature, a contingent/liability which, when invoked, gives rise to a liability in respect of repayment of financial facilities. The Applicant has produced the Corporate Guarantee dated 30.06.2010 and the Cost Overrun Undertaking dated 21.11.2016, which on a plain collective reading alongwith all the facilities sanctions by bank create an obligation in respect of debt advanced to the

principal borrower. The Respondent has not produced any executed, unconditional instrument that unambiguously and effectively discharges or extinguishes the guarantee obligations in favour of the lenders. On the material on record the element of financial debt within the meaning of Section 5(8) is established.”

26. Learned Counsel for the Appellant having relied on certain other undertakings as noted above. We also need to notice briefly the undertakings and the consequence thereof. The first document relied is Share Retention and Management Undertaking dated 28.02.2015 which is brought on record in reply of the Bank at Page 41. The said undertaking as its names indicate was ‘Share Retention and Management Undertaking’. Undertaking is dealt in paragraph 2 where the Corporate Debtor has undertaken to not to divest their respective shareholding in RPL without prior approval of the lenders. Clause 2 which is undertaking is as follows:-

“2 UNDERTAKING

2.1 That Joint Obligors, in consonance with their shareholding, shall:

(a) RIPL and RIIL hereby jointly and severally, unconditionally acknowledge, represent accept undertake, declare and assure as follows:

(i) shall retain management control of RPL; and

(ii) retain majority representation on the board of directors of RPL

(b) RIL shall cause and ensure that the promoters of Obligor 1 retain management and control of Obligor 1.

(c) RIPL, RIIL and IBREL, shall, in consonance with their shareholding and to that extent, not divest their respective shareholding in RPL (without prior approval of the Lenders) and shall jointly retain and maintain 51% (fifty one percent) of the issued, subscribed and fully paid up equity shares (carrying ordinary voting rights as recognized under the Companies Act) issued by the RPL

(d) IBREL shall cause and ensure that the promoters of Obligor 3 retain management and control of Obligor 3.

2.2 The Joint Obligors irrevocably and unconditionally declare and assure that in the event they fail to fulfill their respective obligations as listed in Article 2.1 above, there would be recourse against the respective Joint Obligor/Borrower and it shall be an Event of Default under the Facility Agreement, and Lenders shall have the right to, inter alia, accelerate the Rupee Term Loan Facility in terms of the Facility Agreement and take such other action as may be contemplated thereunder.

2.3 Notwithstanding the aforesaid, the obligations of IBREL shall automatically, without any affirmative action or event or notice, expire and be discharged upon the COD of the Project”

27. The second document relied on Indemnity-cum-Undertaking dated 28.03.2015 which is brought as Annexure 2 to the reply. Undertaking is contained in following words:-

“NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE, INDEMNIFIERS HEREBY IRREVOCABLY AND

UNCONDITIONALLY ACKNOWLEDGE. UNDERTAKE, REPRESENT, DECLARE AND ASSURE THAT:

A) Obligations of Indemnifiers

1. *they shall indemnify PFC SCOR Lender and keep it indemnified at all times against any and all actual losses incurred, suffered or paid by it or required to be incurred, suffered or paid by it and also against all losses of damage incurred. demands, actions, suit proceedings made or decisions and order from judicial for/ counts/tribunals, in connection with, or arising due to the change in name of the Borrower from 'Indiabulls Power Limited' to RattanIndia Power Limited":*

2. *they shall indemnify PFC SCOR Lender and keep it indemnified at all times against any and all claim, losses, damages, costs, liabilities and expenses incurred. Suffered or paid by the it on required to be incurred, suffered or paid by it and also against all losses or damage incurred, demands, actions, suit proceedings made, filed instituted against it. in connection with, or arising out of non-obtainment of express acknowledgement from the counterparties of the Project Document*

3. *they shall indemnify PFC SCOR, Lender and keep it indemnified at all times against any and all claims, losses damages, costs. liabilities and expenses incurred suffered or paid by it or required to be incurred suffered or paid by it and also against all losses or damage incurred, demands, actions, suit proceedings made filed/ instituted against it, in connection with delay in creation & perfection of any other security (not upto its satisfaction).*

B) Obligations of IBREL

1. it shall indemnify PFC SCOR Lender and keep it indemnified at all times against any and all actual losses incurred. suffered or paid by it or required to be incurred, suffered or paid by it and also against all losses or damage incurred, demands, actions, suit proceedings made or decisions and order from judicial fora/courts/tribunals. in connection with, or arising due to the change in name of the Borrower from "Indiabulls Power Limited to Rattanindia Power Limited."

28. The next document to be looked into is Promoters' Deed of Undertaking dated 28.03.2015 which is also filed as Annexure-3 to the reply. Corporate Debtor's undertaking referred to in paragraph 2 (ii) and paragraph 3. Paragraph 2(i), (ii) and (iii) as well as 2.1 is as follows:-

"2. UNDERTAKING

i. RRIPL and RIL hereby jointly and severally, unconditionally acknowledge, represent, accept, undertake, declare and assure as follows:-

(a) they shall infuse Equity (as and when required by PTC SCOR Lender) to ensure maintenance of the prescribed debt in equity ratio,

(b) they shall (jointly and severally) bring/infuse further equity Funds to meet Cost Overrun without any recourse to PFC SCOR. Lender and/or the Lenders/Project Assets and shall seek prior consent of the Lenders and PFC SCOR Lender if the equity fund is brought in by third parties.

(c) they shall fund any/all liquidated damage/ penalty payable under the power purchase agreements and any

financial implication caused as a result thereof shall be from their own resources without recourse to the Project Assets

(d) they shall submit all documents/certificates deeds writings/ agreements statement of accounts evidencing the source of funds in respect of each tranche of Equity infused by them towards the Second COR Upfront Equity and every tranche thereafter to the satisfaction of PFC SCOR Lender

(e) they shall cause and ensure that the Second COR-Upfront Equity shall be in the form of Equity only:

(f) they shall, in consonance with their shareholding and to that extent, retain management control of the Borrower, and

(g) they shall in consonance with their shareholding and to that extent, retain majority representation on the board of directors of RPL.

*ii. **RRIPL, IBREL and RIL**, shall, in consonance with their shareholding and to that extent, not divest their respective shareholding in the Borrower and shall jointly retain and maintain 51% (fifty one percent) of the issued, subscribed and fully paid up equity shares (carrying ordinary voting rights as recognized under the Companies Act) issued by the Borrower,*

*iii. **Obligaion of IBREL***

In the event RIL and RRIPL fail to meet their obligations (set out in 2 i (a) (b) and (d) above) within 5 (five) days upon receipt of notice in relation thereto from PFC SCOR Lender, IBREL, shall immediately (after expiry of 5 days) make good the shortfall in connection with the Cost Overrun. The obligations of IBREL shall be in force and effect till the COD

of the Project is achieved. Notwithstanding anything contained herein, this Undertaking insofar as obligations of IBREL are concerned shall automatically, without any affirmative action or event or notice, expire and IBREL shall be discharged upon the COD of the Project.

2.1 The Promoters irrevocably and unconditionally declare and assure that in the events they fail to fulfill their obligations listed in Article 2.1 above, in the manner and time stipulated herein in the Facility Agreement, there would be recourse against the Borrower, and it shall be an Event of Default under the Underwriting Facility Agreement and PFC SCOR Lender will have the right to PFC SCOR Lender may accelerate the Second Cost Overrun Facility in terms of the Underwriting Facility Agreement and the PFC SCOR Lender may take such other action as may be contemplated thereunder.”

29. When we look into the above Deed of Undertaking, none of the Deed of Undertaking can be read as to mean any undertaking by Corporate Debtor to discharge the financial liability of principal borrower to the lenders. Relevant clauses of the undertaking we have already extracted which were for all entirely different purposes. We, thus, are of the view that neither Cost Overrun Undertaking nor any other undertakings as noted above shall come to the rescue of the Bank to contend that Corporate Debtor was obliged to discharge the financial obligations of borrower to other lender. As noted above, the basis of the proceeding was Guarantee dated 30.06.2010 which we have already dealt above. We, thus, hold that various undertaking as relied by the Financial Creditor including Cost Overrun Undertaking does not oblige

the Corporate Debtor to discharge financial obligation of the principal borrower towards lenders.

Question No.(IV)

30. Corporate Debtor in reply to Section 7 has clearly pleaded that the application is barred by time. It was pleaded by the Corporate Debtor that Loan Recall Notice was issued on 30.09.2020 asking the Corporate Guarantor to make the payment within three days, hence, the default arose within 10A period. Section 7 application has also relied on Loan Recall Notice dated 30.09.2020 issued to the Corporate Debtor that was basis of filing Section 7 application. NPA date was also mentioned as 28.09.2017 in Part IV. Although Corporate Debtor has specifically pleaded that application was barred by Section 10A, Adjudicating Authority in the impugned order has come to the conclusion that default is shown to have arisen on 28.09.2017, Section 10A cannot be invoked. In paragraph 14 of the judgment following has been observed:-

“14. Therefore, in accordance with this Section, no proceedings under Section 7, 9 and 10 of the IBC can be initiated against the Corporate Debtor for the default which has occurred between the period from 25.03.2020 till 24.03.2021. It is abundantly clear that the intention of the legislature is to completely bar the institution of any application ever for initiation of CIRP for the default having occurred during the period 25.03.2020 till 24.03.2021. Where the default is shown to have arisen on 28.09.2017, Section 10A cannot be invoked to shield a pre-

existing default. The Applicant's evidence of NPA classification and continuing unpaid liability defeats the Section 10A bar contention. Further, the law is well-settled that steps under the SARFAESI Act are consequences of default and do not postpone or shift the date of default.”

31. The plea of the Corporate Debtor was also noticed in paragraph 12 that the default arose on 04.10.2020 when Recall Notice dated 30.09.2020 was issued. Adjudicating Authority has rejected the plea of Section 10A relying on date 28.09.2017 which was the date of NPA. It is well settled that the default by the Corporate Guarantor shall only arise when guarantee is invoked. In the present case, guarantee according to own case of the Financial Creditor as pleaded in Part IV of Section 7 application was invoked on 30.09.2020. We have already noticed relevant clauses of Recall Notice dated 30.09.2020 which specifically pleaded that guarantee is being invoked by notice dated 30.09.2020. This Tribunal in its judgment dated 28.04.2023 in **“Pooja Ramesh Singh vs. State Bank of India and Others- 2023 SCC OnLine NCLAT 193”** has held that default of principal borrower is not the default of the guarantor. In paragraphs 27, 29, 30 & 31, following was laid down:-

“27. In view of the clear stipulation in the Deed of Guarantee, default on the part of the Guarantor cannot be treated to be on 05.09.2019, when it is alleged that the Principal Borrower committed default, nor the default on the part of the Guarantor can be on date of NPA i.e. 05.12.2019 for the purpose of present case. In the present case, admittedly, the Bank has issued notice dated 01.10.2020 to the Principal Borrower as

well as to the Guarantor - Essel Infraprojects Ltd. Notice dated 01.10.2020 which has been brought on the record indicate that notice is addressed to the Principal Borrower and to Guarantors. In Para 8 of the notice following has been stated:

"8. Our Clients states that, You Nos.2 to 4, executed Deed of Guarantee on respective dates inter alia agreeing to pay on demand and without demur to our clients alongwith interest, cost, charges, expenses and/or other money due thereon from time to time in terms of the Agreement of Loan for overall limits, Agreement of Hypothecation of Goods and Assets and Supplemental Agreements."

29. The notice dated 01.10.2020, thus, has been issued invoking the grantee which expression is used in Para 12 above. When the Bank has given time to the Guarantor to make payment on 01.10.2020, there can be no default on part of the Guarantor on any earlier date. The default on part of the Guarantor thus has to be subsequent to the notice dated 01.10.2020 i.e. Non-payment within seven days as required.

30. In Part IV of the application, date of declaration of the Principal Borrower's account as NPA i.e. 05.12.2019 was mentioned. Part IV also clearly mentions the invocation of guarantee by notice dated 01.10.2020. Relevant portion of Part IV reads as follows:

"DATE OF DECLARATION OF THE BORROWER'S ACCOUNT AS NPA: December 5, 2019.

(a) It is submitted that the Borrower failed in making payments under the Facilities from the year 2019 onwards. Accordingly, a breach of the contractual arrangement between the Financial Creditor and the Borrower for the Facilities, occurred and consequently a breach of the contractual arrangement between the Financial Creditor and the Corporate Debtor.

(b) In view of the same, a Notice dated October 1, 2020, was issued by the Advocates of the Financial Creditor. In the said Notice, the Financial Creditor also invoked the corporate guarantees provided by various group companies of the Borrower, including by the Corporate Debtor herein. A copy of the Notice is marked and annexed hereto as Annexure-I (L).

(c) However, despite repeated reminders, the Borrower and the Corporate Debtor has failed to cure its default and the Facilities remain unpaid. Thus, it is submitted that the Corporate Debtor has become insolvent and initiation of corporate insolvency resolution process ("CIRP") under the Insolvency and Bankruptcy Code, 2016 ("Code") against the Corporate Debtor, is essential, crucial and in the interests of all stakeholders.

(d) Thus, the present Application is filed by the Financial Creditor under Section 7 of the Code, seeking the initiation of CIRP against the Corporate Debtor, in accordance with the provisions of the Code and the Rules and Regulations made thereunder."

31. When the notice dated 01.10.2020 is relied by the Financial Creditor with further stipulation that the Financial Creditor has invoked the corporate guarantee, the default of corporate guarantor has to be subsequent to 01.10.2020.”

32. Thus, the default by Corporate Guarantor as alleged by the Financial Creditor is only after guarantee invocation dated 30.09.2020 and time for payment having been given 3 days only default shall occur on 04.10.2020 which was within 10A period. Adjudicating Authority committed error in not accepting the plea of the Corporate Debtor that application was barred by Section 7. The date i.e. 28.09.2017 taken by the Adjudicating Authority for purposes of Section 10A is wholly erroneous. The said date is date for declaring NPA account of the principal borrower which has nothing to do with the default on the part of the Corporate Debtor. We, thus, hold that application was clearly barred by Section 10A.

Question (V)

33. We have noted above that the Canara Bank, the Financial Creditor has filed CP (IB) No. 204/ND/2025 against RattanIndia Enterprises Limited, other Corporate Guarantor. Relying on same debt and same date of default, Recall Notice dated 30.09.2020 was relied and CP (IB) No. 204/ND/2025 was filed by RattanIndia Enterprises Limited as Corporate Guarantor. Section 7 application filed by the Financial Creditor against other Corporate Guarantor- RattanIndia Enterprises Limited was rejected by judgment of the same date by the same Bench (Judgment authored by Judicial Member) holding that

there was no financial debt. The Adjudicating Authority by the order of the same date rejected application under Section 7 filed against the other Corporate Guarantor against whom the same Recall Notice dated 30.09.2020 was claimed.

34. Copy of the judgment dated 09.12.2025 in CP (IB) No. 204/ND/2025 has been brought on record as Annexure A-19 to the Appeal which judgment was authored by Learned Judicial Member but pronounced by the same Bench. Same Bench having taken the view that there is no financial debt with regard to one Corporate Guarantor i.e. RattanIndia Enterprises Ltd. Same Bench in the impugned order has admitted Section 7 application which arose out of the same facts and same debt and pleadings with regard to other Corporate Guarantor. We fail to see that when against one Corporate Guarantor Section 7 application was rejected holding that there is no financial debt how on the same debt and same Loan Recall Notice, Section 7 application can be admitted against other Corporate Guarantor, which shows clear non-application of mind by the Adjudicating Authority to the facts of the case. The impugned order dated 09.12.2025 is thus, clearly vitiated due to non-application of mind. Giving two divergent judgments by the same Bench on the same date is unexplainable and un-understandable. Learned Technical Member who has authored the impugned judgment failed to notice the judgment of the same Bench delivered on the same day, disregarding the reasons given in the judgment dated 09.12.2025 in CP (IB) No. 204/ND/2025 that there is no financial debt, is another reason on which impugned judgment cannot be sustained.

35. We have already observed that the Financial Creditor rushed to file Section 7 application without even looking into Deed of Guarantee and other relevant documents and without adverting to all relevant facts. The subsequent Guarantee Deed dated 11.01.2012 was concealed in Section 7 application which was relevant document as pleaded by the Corporate Debtor in its reply to Section 7 application. We are constrained to observe that the Financial Creditor has proceeded to file Section 7 application in a casual and callous manner which is disapproved.

36. In view of the foregoing discussions, the Appeal is allowed. The impugned order dated 09.12.2025 is set aside. Section 7 petition C.P. (IB) No. 317 of 2025 is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

4th May, 2026

Anjali