

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. NO. 782 OF 2025
IN
C.P. IB NO 2561 (ND) OF 2019

IN THE MATTER OF:

Shapoorji Pallonji & Co. Private Limited

...Operational Creditor

Versus

Sinnar Thermal Power Limited.

... Respondents

AND IN THE MATTER OF:

Bharat Heavy Electricals Limited

...Applicant

Versus

**Rahul Jindal,
Resolution Professional of Sinnar Thermal Power Limited**

...Respondent

Order Delivered on: 22.07.2025

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Mr. Amish Tandon, Ms. Anushree Kulkarni, Mr.
Swankit Nanda, Advocates.

For the RP : Mr. Somesh Srivastava, Ms. Drishti Kaushik,
Mr. Karan Gandhi, Mr. Ramakant Rai, Advs.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The present Application is being preferred on behalf of the Applicant, Bharat Heavy Electricals Limited ("BHEL") under Section 60(5) of the Insolvency and Bankruptcy Code ("IBC") 2016 read with Rule 11 of NCLT Rules, 2016

("Applicant"), seeking directions against the Resolution Professional ("RP") of Sinnar Thermal. The following reliefs have been sought:

(a) Allow the present application and direct the Respondent/Resolution Professional of Corporate Debtor to admit the claim of the Applicant (made in FORM B dated 09.04.2024) that is to the tune of Rs. 2749,08,32,362/-;

(b) In the alternative to prayer (a), admit the following claim of the Applicant to the tune of INR 1,51,87,75,272.45 + USD 46,01,513.45 + Euro 1,05,40,568.51 (Total to the tune of Rs. 273.84 Crores approximately after taking into account the relevant conversion rate) as reflected/admitted in the books of account of the Corporate Debtor (in terms of the email dated 25.04.2024); and (ii) Rs. 63 Crores along with interest (under the interim award) (approx. to the tune of Rs. 120.51 Crores including interest as on 19.09.2022 as per FORM-B) in respect of interim award dated 27.07.2017 in favour of the Applicant (for the reasons explained in the present Application above);

(c) Pass such other and further orders or directions, as may be deemed fit and proper by this Hon'ble Court in the facts and circumstances of the present case.

2. SUBMISSIONS OF THE APPLICANT:

- i.** The Applicant, Bharat Heavy Electricals Limited ("BHEL"), is a public sector undertaking of the Government of India having its registered office at BHEL House, Siri Fort, New Delhi-110049. The Applicant was contracted by the CD to design, supply, erect and commission thermal power plants in Maharashtra.
- ii.** The CD, Sinnar Thermal Power Limited. ("CD") was admitted in the Corporate Insolvency Resolution Process ("CIRP") vide an order dated 19.09.2022 of this Hon'ble Tribunal in the CP/IB/2561/2019 titled "Shapoorji Pallonji & Co. Private Limited v. Sinnar Thermal Power Ltd.". The Respondent, was appointed as the Resolution Professional ("RP") in the CIRP of the CD vide this Hon'ble Tribunal's order dated 19.03.2024.
- iii.** The Applicant was awarded contracts for the following projects by the CD:

- I. Nashik Thermal Power Plant Phase I at Nashik (Maharashtra) having a capacity of 1350 MW (5 x 270 MW Units) ("Nashik Phase - I").
 - II. Nashik Thermal Power Plant Phase - I: Spares package.
 - III. Nashik Thermal Power Plant Phase II at Nashik (Maharashtra) having a capacity of 1350 MW (5 x 270 MW Units) ("Nashik Phase II").
- iv.** In connection with the Phase-I and Phase-II Projects, CD and the Applicant entered into Supply and Service Contracts for BTG Package and Contract for supply of Spares for BTG package (under Phase-I Project). Thereafter, during the execution of contracts, various disputes arose between the Applicant and CD regarding failure/inordinate delay on the part of CD in replenishing of Letter of Credit (LCs), inordinate delay on the part of CD in releasing requisite inputs/performing reciprocal obligations, delay in making payment due to the Applicant herein, etc. Due to failure on the part of the CD to honour the time bound commitments under the contractual arrangement (as existing between the CD and the Applicant), the Applicant invoked arbitrations under the contractual arrangement in respect of both, Phase-I and Phase-II in the year 2019 and 2015 respectively.
- v.** Upon invocation of the arbitration clause by the Applicant, the Arbitral Tribunals were constituted. The Arbitral Tribunal in Nasik Phase-II proceedings passed an interim award dated 27.07.2017 in favour of the Applicant. As per the interim award dated 27.07.2017, the Applicant is entitled to an interim award for an amount of Rs. 63 Crores for Nashik Phase-II with interest calculated @18% per annum w.e.f. 30 days from the date of the Award i.e. 27.07.2017. As on 19.09.2022, the said Interim Award amount along with interest awarded is Rs. 120,50,77,808/-. In connection with the interim award (i) OMP (Comm.) 373/2017 was filed by the CD under section 34 of Arbitration and Conciliation Act, 1996 before the Hon'ble High Court of Delhi which is pending; (ii) OMP (Enf.) (Comm.) 150/2017 filed by the Applicant seeking to enforce the said interim award dated 27.07.2017 before the Hon'ble High Court of Delhi which is pending.
- vi.** It is submitted on behalf of the Applicant that an interim Arbitral Award, dated 27.07.2017, has been passed by the Ld. Arbitral Tribunal in favour of Applicant basis the admission made by the Corporate Debtor. Therefore, the

claim of the Applicant is not contingent as the same has been admitted by the Corporate Debtor and affirmed by the Ld. Arbitral Tribunal.

- vii.** Further, no order has been passed by the Hon'ble High Court of Delhi in staying the interim Arbitral Award, dated 27.07.2017, in the objection petition (OMP (Comm) No. 373/2017) filed by the Corporate Debtor nor the execution of the interim Arbitral Award was stayed in the enforcement proceedings filed by the Applicant before the Hon'ble High Court of Delhi in OMP (ENF) (Comm) No. 150/2017. Hence, in the absence of any stay on the interim Arbitral Award by the concerned Judicial Authority, there is no ambiguity or doubt regarding the admissibility of the claim or quantum of claim of the Applicant against the Corporate Debtor in respect of the interim arbitral award.
- viii.** Vide order dated 19.09.2022, the CIRP of the CD was initiated by this Hon'ble Tribunal and the claims of creditors and stakeholder of the CD were invited. The Hon'ble NCLAT vide order dated 26.09.2022 in an appeal filed by one of the suspended directors of the CD directed the IRP to not take any further steps in CIRP of the CD. On 19.01.2024, the Hon'ble NCLAT dismissed the said appeal. During the CIRP of the CD, the Applicant herein filed its claims under FORM -B as an Operational Creditor of the CD on 09.04.2024. Further, the proceedings before the above two arbitral tribunals were adjourned in view of the insolvency proceedings initiated against the Corporate Debtor.
- ix.** Under FORM-B, the Applicant filed its claims of Rs. 2749,08,32,362/- (along with interest at the rate of 18% per annum) along with all the supporting documents. A break-up of the total claim of Rs. 2749,08,32,362/- is given below:
- a) Claim for Phase-I: Supply & Services Contract: Rs. 1754,69,60,327/-
 - b) Claim for Phase - I: Spares Package: Rs. 7,91,45,391/-.
 - c) Claim for Phase -II: Rs. 986,47,26,644/-.
- x.** Vide its email dated 25.04.2024, the RP acknowledged the receipt of the Applicant's claims and informed the Applicant that the same was under verification.

xi. On 25.04.2024, the RP issued another email to the Applicant informing that during the verification process, the RP verified and compared the claim of the Applicant with the books of accounts of the CD and observed that certain balance amounts were reflected pending to be paid in the name of the Applicant. The RP further sought clarification in respect of the interest clauses and status of the arbitration proceedings, pending before any court. The balance amount as reflected in the Books of account of the CD as per the email dated 25.04.2024 are given below:

Payable to BHEL as per STPL books				
Currency	INR	USD	EUR	Total
Project Phase-1	(1,35,55,99,383.90)	(41,86,109.90)	(66,15,503.18)	
Spares Phase-1	2,04,66,625.26			
Project Phase-2	(18,36,42,513.81)	(4,15,403.55)	(39,25,065.33)	
Total	(1,51,87,75,272.45)	(46,01,513.45)	(1,05,40,568.51)	

xii. As per the books of account the balance amount payable to the Applicant is INR 1,51,87,75,272.45 + USD 46,01,513.45 + Euro 1,05,40,568.51 (total to the tune of Rs. 273.84 Crores approximately after taking into account the relevant conversion rate).

xiii. On 10.05.2024, the Applicant in response to the RP's email dated 25.04.2024, issued an email to the RP wherein the Applicant provided the responses and documents to the RP by indicating that the acknowledgement of RP with respect to the claims submitted by the Applicant against the CD.

xiv. On 20.05.2024, vide the first impugned email, the RP incorrectly concluded that since the claim submitted by the Applicant is pending adjudication before judicial forum the claims of the Applicant could not be admitted and further stated that the role of the RP in a CIRP is administrative in nature and the RP facilitates the CIRP under the supervision of the COC hence, RP cannot sit in adjudication or quantification of disputed claims. The RP further misplaced the reliance on judicial precedent in **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors. (Essar Steel) and Central Transmission Utility of India Ltd. v. Anil Chhawchharia & Ors.**

(Company Appeal (AT) (INS) No. 25/2022), the RP informed the Applicant that the disputed claims received by the RP from the Applicant in CIRP of the CD were admitted at notional value of Rs. 1/-.

- xv.** The Applicant on 01.06.2024 issued a detailed reply to the RP's email dated 20.05.2024. The Applicant, while referring to the email dated 25.04.2024 of the RP wherein the RP has admitted that the books of account of the CD clearly reflects that the amount to the tune of INR 1,51,87,75,272.45 + USD 46,01,513.45 + Euro 1,05,40,568.51 (Total to the tune of Rs. 273.84 Crores approximately after taking into account the relevant conversion rate) are payable to the Applicant by the CD, informed the RP that there was no ambiguity in regard to the claims of the Applicant and hence the email dated 20.05.2024 is contrary to law as well as RP's own email dated 25.04.2024. The Applicant further clarified that the judicial precedents (as relied upon by the RP in its email dated 20.05.2024) cannot be relied upon in the present case as the interim award dated 27.07.2017 was passed on the basis of the admission of the CD and hence the claim of the Applicant is not contingent. The Applicant further apprised the RP of absence of any order of stay in respect of the interim award and that there is no ambiguity regarding the claim of the Applicant. The Applicant relied upon various judicial precedents wherein the courts have directed the resolution professional to admit the entire claim on the basis of the arbitral award and also clarified that so far as the Spares Package Claims are concerned, there were no on-going dispute.
- xvi.** In response to the email dated 01.06.2024 of the Applicant, the RP issued the second impugned email dated 20.06.2024 through its counsel, wherein the RP despite acknowledging the position of books of account of the CD (as done in the email dated 25.04.2024), stated that the claim verification is an ongoing process and hence the reliance on the email dated 25.04.2024 was devoid of any substance. Further the RP denied the judicial precedents cited by the Applicant in its email dated 01.06.2024 and reiterated that the claims of the Applicant have been rightly treated. Further, as regards, the Spares claim, the RP "while placing reliance of the books of account" called upon the Applicant to pay the amount as reflected in the books of account of the CD.

The RP, in the illegal manner, revised the treatment of claim submitted by the Applicant in the following manner:

- a) Phase I Claim is admitted as contingent claim at the notional value of INR 1.
- b) Phase II Claim is admitted as contingent claim at the notional value of INR 1.
- c) Spares Claim is rejected.

xvii. It is submitted that vide the impugned emails dated 20.05.2024 and 20.06.2024, the RP, has illegally and deliberately avoided the entire claim of the Applicant on basis of the contingency provision by assigning the notional value to the claim of the Applicant. Vide email dated 20.06.2024, the RP has rejected the entire claim amount of the RP towards Spare Claims. The Applicant being aggrieved by the rejection of the claim of the Applicant and admission of the claims at notional value has preferred the present Application seeking appropriate directions against the RP for admission of Applicant's claim.

xviii. It is submitted that to the utter dismay of the Applicant herein, the RP denied the claim of the Applicant vide, emails dated 20.05.2024 and 20.06.2024. The impugned emails of the RP has erroneously decided the claims of the Applicant by denying the contention and law in support of the Applicant without application of mind. The RP, without providing any cogent reason, has admitted the claims of the Applicant by assigning the notional value and has rejected the entire claim amount towards the Spares claim.

xix. It is submitted that the RP has erred in applying the law laid down in Essar Steel Supra in the present case. The law laid down in Essar Steel Supra is only applicable to the "disputed claims", whereas in the cases where the liability is admitted in the books of account of a corporate debtor (i.e. undisputed by the CD), the same cannot be assigned notional value of Rs. 1/ by the resolution professional under the contingency provision.

xx. The Respondent has completely misconstrued the case of the Applicant. The liability/operational debt of the CD towards the Applicant is unquestionable which is clearly from the books of account of the CD. It is impermissible for

the RP to assign its own view and decision at the time of verification process/admission of claim of the Applicant when the CD has in its own books of account reflected the said amount as due and payable to the Applicant.

xxi. It is further submitted that the Applicant and the Corporate Debtor as regard the aforesaid transaction, are seller and buyer, respectively. Thus, both the parties are governed by the provisions of Sale of Goods Act, 1930 and Transfer of Property Act, 1882. In terms of Sections 45 to 48 of Sale of Goods Act, 1930 and Section 55(4)(b) of Transfer of Property Act, 1882, the Applicant herein is a Secured Creditor as it has a lien / charge over the goods sold to the Corporate Debtor and goods sold and having been erected, until the consideration for the same remains unpaid and it is an admitted fact that the Corporate Debtor has failed to make the payment towards the goods / property supplied by the Applicant. Thus, the Applicant herein is not only an operational Creditor of the Corporate Debtor but is also a secured creditor of the Corporate Debtor in terms of statutory lien and statutory charge created by Transfer of Property Act, 1882 and Sale of Goods Act, 1930.

xxii. The Applicant herein is a secured operational creditor for its entire debt in terms of definition of "Secured Creditor" and "Security Interest" as provided in Sections 2(30) and 2(31) of IBC. The Applicant in this regard places reliance on the judgement of the Hon'ble Supreme Court in the matter of **Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni & Anr., Civil Appeal Nos. 7590-7591 of 2023** dated 12.02.2024 and judgment in **State Tax Officer vs Rainbow Papers Limited cited as 2022 SCCOnline SC 1162**, wherein the Hon'ble Supreme Court has recognised the security interest created in favor of the creditor in terms of charge created by statutory implication. Hence, the Applicant herein is also a Secured Creditor.

xxiii. It is a settled legal position that the RP cannot ignore the admitted liabilities according to the books of account/balance sheet of the CD. As per the IBC, the RP is required to determine the financial position of the CD which is essential pre-requisite for any resolution plan. Thus, it is impermissible to omit and ignore the financial position/liabilities of the CD which is disclosed in the books of account/balance sheets of the CD. The books of account contains admissions of liability and the company/corporate debtor

signing/maintain it intends to make those admissions. Thus, it was impermissible for the RP to have ignored the claim amount of the Applicant as reflected in the books of account of the CD. Reliance was also placed on ***Engineering Mazdoor Parishad Devas through its General Secretary v. Teena Saraswat Pandey, RP of S&H Gears Pvt Ltd.***

- xxiv.** The Hon'ble Supreme Court in its judgment in the matter of ***Asset Reconstruction Company (India) Limited v Bishal Jiaswal and Ors., AIR 2021 SC 5249***, has clearly held that even if preparation of the financial statements including the balance sheet and directors report is pursuant to a statutory duty conferred under the Sections 92, 128, 129, 132, 134 and 137 of the Companies Act, 2013, however, the same does not precludes the balance sheet from acting as an acknowledgement of debt.
- xxv.** The Applicant further submitted that even as per Regulation 14 of the CIRP Regulations, 2016, where the amount claimed by the creditors is not precise due to any contingency or other reasons, the RP is required to make best estimate of amount of the claim based on the information available with the RP. The books of accounts qualify to be the financial statement and reflect true position of the financial status of the CD. It is submitted that the RP has failed to verify the claims of the Applicant as per Regulation 14, when clearly the books of account and the interim award dated 27.07.2017 which were the necessary documents, were available with the RP to admit the claims of the Applicant. The Regulation 14(2) permits a review only when new information comes to the knowledge of the RP. Regulation 14(2) does not permit revising the claims when no new document has come to the knowledge of the RP.
- xxvi.** The RP vide its email dated 20.05.2024 and 20.06.2024 has taken an about turn from its acknowledgement of the amount payable by the CD to the Applicant and has failed to justify/provide for the sufficient reasons as to how the RP, despite the acknowledgement vide email dated 25.04.2024, has assigned the notional value to the claim amount of Phase-I and Phase-II and has rejected the entire Spares Claim.
- xxvii.** The RP, on one hand has completely disregarded/failed to consider the liabilities of the CD in its books of account towards the Applicant, however, on the other hand vide its email dated 20.06.2024 has illegally refused the

claim of the Applicant in respect of Spares Package by relying upon the "entries in books of account" of the CD. The RP has incorrectly stated in its email dated 20.06.2024 that the books of account of the CD reflect that an amount of Rs. 2,04,66,625/- was recoverable from the Applicant in respect of the Spares Claims and the Applicant's Spare claims cannot be admitted. Thus, it is impermissible for the RP to cherry pick entries from the books of account of the CD. It is submitted that the conduct of the RP in claim verification process of the Applicant in the CIRP of the CD is clearly against the mandate of the IBC. It is submitted on behalf of the Applicant that the RP cannot be permitted to approbate and reprobate at the time of placing reliance on books of account which is impermissible for the RP as per the IBC as also as per the facts and circumstances of the present case.

xxviii. The law laid down in *Essar Steel Supra* is only applicable to the "disputed claims", whereas in the cases where the liability is admitted in the books of account of a corporate debtor (i.e. undisputed by the CD), the same cannot be assigned notional value of Rs. 1 /- by the resolution professional under the contingency provision.

xxix. In the absence of any stay on the interim Arbitral Award by the concerned courts, there is no ambiguity or doubt regarding the admissibility of the claim or quantum of claim of the Applicant against the CD.

xxx. The claim of the Applicant is not contingent as the same has been affirmed by the Ld. Arbitral Tribunal on the basis of admissions of the CD. The Applicant in this regard is placing reliance on the judgement of this Hon'ble Tribunal (Kolkata Bench) in the matter of ***Rishima Sa Investments LLC (Mauritius) vs Sarga Hotel Private Limited & Anr*** decided on 04.04.2023 wherein a similar issue was dealt.

xxxi. The Hon'ble Supreme Court in ***Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17*** has settled that the resolution professional has no adjudicatory powers. Hence, no grounds or reasons can be assigned by the RP for ignoring the crystallised sum of INR 1,51,87,75,272.45 + USD 46,01,513.45 + Euro 1,05,40,568.51 (Total to the tune of Rs. 273.84 Crores approximately after taking into account the relevant conversion rate) which is admittedly reflected payable to the Applicant in the books of account of the

CD. Reliance was also placed on ***Mrs. Supriya Singh & Ors v. M/s Ansal Urban Condominiums Pvt. Ltd. & Anr Company Appeal (AT) (INS) No. 1947 of 2024.***

xxxii. In ***United Spirits Limited v. Mr. Kondisetty Kumar Dushyantha and Ors.***, being I.A. 307 of 2021 in CP.(IB)No. 147/BB/2018, wherein on similar facts the Hon'ble NCLT Bengaluru has held that the award by the Arbitral Tribunal is binding on all the parties till it is set aside. Accordingly, the Resolution Professional was directed to admit the claim of the Applicant therein, subject to the outcome of the Application pending with the Hon'ble Commercial Court; and was directed to place the same before the CoC. Hon'ble NCLT Bengaluru further held that it cannot be disposed by providing only notional amount of Re. 1/ as has been done in the case. Reliance is also placed on the judgement of the Hon'ble NCLT Hyderabad Bench in the matter of ***SBL Construction Private Limited v. M/s IVRCL Limited***, wherein on similar facts, the Hon'ble NCLT vide its Order dated 01.04.2019, directed the Resolution Professional to admit the entire claim basis the Arbitral Award passed in favor of the creditor, thereby setting aside the action of the Resolution Professional of rejecting the claim in view of pendency of challenge to the Arbitral Award.

xxxiii. Regulation 7(2)(iii) of the CIRP Regulations explicitly provides that an order of a court or tribunal, which has adjudicated upon the non-payment of a debt, serves as a valid proof of debt. In the present case, an Arbitral Tribunal has rendered an interim award dated 27.07.2017, directing the Corporate Debtor to pay an amount to the tune of INR 63 Crores with interest to the Applicant. This award conclusively establishes the existence of an unpaid debt in favor of the Applicant. The award, having been passed after due adjudication, constitutes a legally binding decision that confirms the debt's validity and the Corporate Debtor's liability to pay the adjudicated amount.

xxxiv. Further, Regulation 7(2)(iv) of the CIRP Regulations provides that the existence of debt due to the operational creditor can be proved on the basis of financial accounts. The RP in its email dated 25.04.2024 mentions that "With respect to claim filed by you and on comparison of same with Books of accounts of the Corporate Debtor, we observed that following balances are pending to be paid in name of BHEL: .. ." However, the RP in complete

disregard to the provisions of IBC and books of accounts of the Corporate Debtor, assigned the notional value of Rs. 1/- to the Applicant's claim.

xxxv. Recently, vide its order dated 06.03.2025, the Hon'ble High Court of Delhi in OMP (COMM) 372/2017, preferred by RattanIndia Power Ltd. (which is a connected matter to OMP (COMM) 373/2017- preferred by the Corporate Debtor), has upheld the common Interim Award dated 27.07.2017 and thereby has upheld claims of the decree holder/Applicant herein.

3. SUBMISSIONS OF THE RESPONDENT:

- i.** It is humbly submitted that the RP has verified the claim in accordance with the applicable provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC/Code") and the regulations framed thereunder and applicable judicial precedents. As per the provisions of the Code, verification of claims submitted by the creditors during the CIR Process is an ongoing process.
- ii.** Regulation 13(1) of the Insolvency and Bankruptcy Board of India. (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") stipulates a bounden duty of the RP to verify the claims received in CIR Process. Regulation 13(1) of the CIRP Regulations further mandates the RP to prepare a list of creditors in CIR Process of STPL and update the said list, if required. Moreover, Regulation 14(2) of the CIRP Regulations vests the RP with the power to revise the claim amount admitted or rejected by the RP qua any creditor, if the RP becomes privy to any additional information warranting such revision.
- iii.** Vide email dated 25.04.2024, RP had highlighted the position as per the books of account of STPL and sought certain clarifications from the Applicant and also sought for information in relation to admission of the claimed amount by a court. The email dated 25.04.2024 categorically stated that the claim submitted by BHEL is still under verification. Therefore, the submissions made by BHEL with respect to purported admissions made by the RP vide email dated 25.04.2024 are inconsequential because the email dated 25.04.2024 clearly states that the claim is under verification. Further, in this regard, the Applicant has erroneously relied upon the judgement of the Hon'ble Supreme Court in Asset Reconstruction Company (India) Limited v. Bishal Jaiswal and Ors. (AIR 2021 SC 5249) ("Bishal Jaiswal Case") wherein

it was held that entries of books of accounts can be relied upon for verification of a claim. The Bishal Jaiswal Case affirms that an entry in the balance sheet of a company may extend the limitation period for initiating proceedings under the IBC. It is submitted that BHEL is attempting to disregard the statutory provisions of Regulation 14(2) of the CIRP Regulations which vest the RP with the power to re-examine any claim.

- iv.** It is submitted that Phase I Claim is under adjudication before an arbitral tribunal wherein arbitration proceedings were initiated on 15.03.2019. Notably, in view of initiation of insolvency proceedings against STPL and imposition of moratorium under Section 14 of the Code, the arbitral tribunal adjourned the arbitration proceedings in relation to Phase I Claim sine die on 28.02.2023 vide its Procedural Order No. 56.
- v.** It is submitted in relation to the Phase II Claim that the Interim Award dated 27.07.2017 passed in respect of the Phase II Claim was challenged by the Corporate Debtor before Hon'ble Delhi High Court under Section 34 of the Arbitration and Conciliation Act, 1996 (A&C Act 1996) through OMP. (COMM.) 373/2017, which is pending for adjudication.
- vi.** It is submitted that the role of RP in a CIR Process is administrative in nature and the RP facilitates the CIR Process under the supervision of the Committee of Creditors. The RP does not have any adjudicatory powers. Accordingly, the RP cannot sit in adjudication or quantification of disputed claims. In this regard, reference is invited to ***Swiss Ribbons Private Limited and Anr. v. Union of India & Ors. (2019) 4 SCC 17.***
- vii.** In view of the above, it is humbly submitted that the Phase I Claim and Phase II Claim is still under adjudication and have not attained finality. Accordingly, the same has been verified as being a contingent claim and correctly admitted at notional value of Re. 1 in accordance with law and judicial precedents. Reliance is placed on ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors*** [(2020) 8 SCC 531] , ***Central Transmission Utility of India Ltd. vs. Ashish Chhawchharia & Ors.*** [Judgment dated 07.05.2024 passed in CA (AT)(Ins) No. 25 of 2022 and ***Bank of India vs. McNally Bharat Engineering Company Limited*** (CP (IB) No. 891/KB/2020).

- viii.** It is most respectfully submitted that the reference to the United Spirits Case and SBL Constructions Case by the Applicant is ill-founded because in the United Spirits Case, the Hon'ble NCLT Bengaluru held the arbitral award to be binding since only applications under Section 30 and 33 of the Arbitration Act, 1940 were pending before the Commercial Court. United Spirits Case, there were no pending proceedings challenging the award under Section 34 of the A&C Act 1996 before the appropriate High Court. In the facts of SBL Construction Case, the challenge to the arbitral award under Section 34 of the A&C Act 1996 had culminated and been decided in favour of the claimant. Whereas, in the present situation, the petition under Section 34 of the A&C Act 1996 challenging the Interim Award [i.e., OMP. (COMM.) 373/2017] with respect to Phase II Claim is still pending and has not attained finality
- ix.** The Applicant has misplaced reliance on the judgement of this Hon'ble Tribunal (Kolkata Bench) in the matter of ***Rishima Sa Investments LLC (Mauritius) vs Sarga Hotel Private Limited & Anr.*** decided on 04.04.2023. In this context, it is pertinent to highlight that no order dated 04.04.2023 has been passed in the said matter. Even otherwise, the final order dated 30.11.2023 passed by the Hon'ble NCLT Kolkata in *Rishima Sa Investments LLC (Mauritius) v. Avishek Gupta, Resolution Professional of Sarga Hotels Pvt. Ltd* [IA. (IB) No. 1 131/KB/2022 in CP (IB) No. 302/KB/2021] is in regard to a foreign arbitral award that was only pending enforcement which can be challenged only on limited grounds. However, in the present case, the Interim Award has been challenged under Section 34 of A&C Act 1996 for setting aside the Interim Award.
- x.** It is submitted that the Spares Claim was rejected by the RP basis the books of account of the Corporate Debtor wherein it reflected that an amount of INR 2,04,66,625 (Indian Rupees Two Crore Four Lakh Sixty Six Thousand and Six Hundred and Twenty Five only) was recoverable from BHEL in respect of Spares Claim and no amount was due to BHEL.
- xi.** It is submitted that the Applicant has erroneously contended that it is a 'secured creditor' on the basis that it has a lien and charge in terms of the provisions of TOPA and SOGA.

- xii.** It is humbly submitted that the common element of the definition of the term "Immovable Property" as set out under TOP A, General Clauses Act, 1897, Registration Act, 1908 and Real Estate (Regulation and Development) Act, 2016 is that all the abovementioned statutes draw reference to objects or things which are permanently fastened to anything which is attached to the earth. By no stretch of imagination, a claim filed by BHEL in CIR Process of STPL can be inferred to be falling under the above stated definitions of immovable property. Hence, the vague reliance placed by BEHL on provisions of TOP A is entirely ill-founded.
- xiii.** Any right with respect to payment to be made to BHEL is contingent upon conclusion of proceedings under the A&C Act, 2016. It is humbly submitted that, proceedings with respect to BHEL Claim are admittedly pending before the arbitral tribunal as well as the relevant high court. Hence, reliance placed by BHEL on provisions of SOGA to assert a right of lien with an ulterior objective of becoming a secured creditor in CIR Process of STPL is misconceived and deserves to be rejected on this ground alone.
- xiv.** Without prejudice to the above it is relevant to point that BHEL has vaguely relied upon Section 45 to 48 of SOGA without any specific pleadings. However, from scrupulous perusal of hazy pleadings set out by BHEL, it appears that BHEL could be alluding to Section 46 and 47 of SOGA to claim lien of an unpaid seller. Reliance is placed on ***Contship Containers Lines Limited v. D.K. Lall and Others*** 2010 4 SCC 256 wherein it was held that the unpaid seller's lien on the goods shall be while the seller is in possession of the said goods and the said lien stands terminated upon delivery to the carrier or the buyer.
- xv.** In the present case, the Applicant has admittedly parted with the possession of the goods by making delivery of the goods to the STPL and STPL has taken possession of the goods. Hence, in accordance with Section 49 of SOGA, the purported right of lien of an unpaid seller does not exist.
- xvi.** It is submitted that while BHEL is a creditor, there is no security interest that has been created in favour of BHEL to classify it as a secured creditor. It is humbly submitted that in the present case, there is no creation or provision of any security interest in favour of the Applicant, i.e., BHEL. Reference is

made to **Anuj Jain vs. Axis Bank Limited and Ors.** In view of the foregoing, it is submitted that no such security interest has been created or provided in favour of BHEL under the supply and service agreements executed between BHEL and the corporate Debtor.

xvii. It is clear that the BHEL cannot claim to be a 'secured creditor' under the Code. Hence, the submissions made by the Applicant in this regard are liable to be rejected.

4. ANALYSIS AND FINDINGS:

- i.** The present application has been preferred by Bharat Heavy Electricals Limited ("Applicant" or "BHEL") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), read with Rule 11 of the NCLT Rules, 2016, seeking directions to the Resolution Professional ("RP") of Sinnar Thermal Power Limited ("Corporate Debtor" or "CD") to admit its claim submitted in Form B dated 09.04.2024. The Applicant's total claim stands at ₹2749.08 crores, arising out of supply and service contracts in respect of two thermal power plant projects awarded by the Corporate Debtor, as well as an interim arbitral award dated 27.07.2017.
- ii.** The core issue raised by the Applicant is that despite (i) entries in the books of accounts of the CD admitting a significant portion of its dues, and (ii) an interim award in its favour that has not been stayed or set aside, the RP has admitted its claims under Phase I and Phase II contracts at a mere notional value of ₹1 each, and has rejected the Spares Package claim entirely. The Applicant contends that such rejection and notional admission is contrary to the settled principles of law and the statutory framework under the IBC.
- iii.** On the other hand, the RP has submitted that the claims are disputed and/or under adjudication before arbitral tribunals or courts, and hence, are to be treated as contingent. It is argued that the role of the RP is administrative and that disputed claims cannot be adjudicated upon during CIRP. The RP relies upon judicial precedents such as *Essar Steel*, *Swiss Ribbons*, and *Anuj Jain* in support of its treatment of the Applicant's claims.
- iv.** At the outset, it is a settled proposition that the RP is not vested with any adjudicatory powers under the Code. The Supreme Court in ***Swiss Ribbons Pvt. Ltd. v. Union of India [(2019) 4 SCC 17]*** has categorically held that the

RP has only administrative functions and cannot adjudicate upon the validity of claims. Therefore, the RP's reliance on this principle is correct to the extent that he cannot adjudicate the claims.

- v. However, the Applicant's claim in respect of Phase-II of the Nashik project is supported by an interim arbitral award dated 27.07.2017 passed by a duly constituted Arbitral Tribunal, which has not been stayed by any competent court. The Section 34 petition filed by the Corporate Debtor against the interim award (OMP (Comm.) 373/2017) is admittedly pending. Further, the Delhi High Court has recently, vide order dated 06.03.2025 in OMP (Comm.) 372/2017, upheld the same interim award dated 27.07.2017 in a connected matter arising out of a common arbitral proceeding. This order lends additional credence to the award relied upon by the Applicant. The RP has not produced any contrary order or stay granted by the High Court in OMP (Comm.) 373/2017 filed by the Corporate Debtor.
- vi. Additionally, the RP, in its email dated 25.04.2024, has acknowledged that the books of accounts of the Corporate Debtor reflect outstanding dues to the Applicant to the tune of ₹1,51,87,75,272.45 + USD 46,01,513.45 + Euro 1,05,40,568.51 (approximately ₹273.84 crores). While the RP argues that this communication was issued during the process of verification, no cogent explanation has been provided as to why such acknowledgement was later disregarded in entirety.
- vii. In this regard, the Hon'ble Supreme Court in ***Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal [(2021) 6 SCC 366]*** held that entries in the books of accounts, including balance sheets, constitute a valid acknowledgment of debt under Section 18 of the Limitation Act. While the judgment was rendered in the context of limitation, the principle that entries in the books of account reflect admitted liabilities is equally applicable for claim verification under the Code, especially when corroborated by contractual and arbitral documentation.
- viii. Regulation 7(2)(iii) of the CIRP Regulations provides that a decree or award passed by a court or tribunal constitutes valid proof of debt. Likewise, Regulation 7(2)(iv) permits reliance on financial statements for proving the

existence of debt. The present case satisfies both conditions—there is an interim award as well as financial records admitting the liability.

- ix.** Regulation 14(1) of the CIRP Regulations, 2016 mandates that when a claim is not precise due to contingency or other reasons, the RP must make a best estimate based on the information available. Regulation 14(2) permits revision only upon receipt of new information. In the instant case, there is no material on record to show that any new or contradictory information came to light between the RP's emails dated 25.04.2024 and 20.06.2024 that would justify a reversal of position or treatment of the claim at notional value.
- x.** As regards the Spares Package claim, the RP has rejected it on the ground that ₹2.04 crores was shown as recoverable from the Applicant in the books of the CD. However, the RP has failed to justify why this particular entry should be accepted over the entries that admit dues under Phase I and II contracts. Cherry-picking selective book entries while rejecting others that favour the creditor is not only arbitrary but also contrary to the RP's obligation of fairness and objectivity in claim verification.
- xi.** The cases relied upon by the by the RP are distinguishable on facts. In the present matter, there is (i) a partly adjudicated interim award, (ii) no stay against such award, and (iii) admission of liability in the corporate debtor's financial records.
- xii.** In light of the above, this Adjudicating Authority is of the opinion that the RP erred in treating the Applicant's claim as contingent and in assigning a notional value of ₹1, despite the unequivocal entries in the books of account and an operative arbitral award. The treatment of the Spares Package claim is also found to be arbitrary and lacking adequate justification.
- xiii.** In view thereof, the prayer in **clause (b)** stands **allowed**. The RP is directed to admit the claim of the Applicant of Rs. 273.84 Crores and Rs. 120.51 Crores.
- xiv.** Accordingly, the Interlocutory Application i.e. **I.A NO. 782 OF 2025** is disposed of in the above terms.

-SD/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (JUDICIAL)**