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

IA NO. 3173 OF 2025

IN

COMPANY PETITION(IB) NO. 2561/ND/2019

IN THE MATTER OF:
M/S. SHAPOORJI PALLONJI & CO. PVT. LTD.
... OPERATIONAL CREDITOR

VERSUS

SINNAR THERMAL POWER LTD.
. .. RESPONDENT/ CORPORATE DEBTOR

AND IN THE MATTER OF:
AXIS BANK LIMITED
. .. APPLICANT

VERSUS

Mr. Rahul Jindal
(Resolution Professional for M/s Sinnar Thermal Power Limited
... RESPONDENT NO. 1

Committee of Creditors of Sinnar Thermal Power Limited
Through its lead member,
Power Finance Corporation Limited
. .. RESPONDENT NO. 2

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 14.10.2025

PRESENT:

For the Applicant	**:**	Mr. Aayush Agarwala, Mr. Prakash Jha, Advocates
For the Respondent	**:**	Mr. Somesh Srivastava, Ms. Nimisha, Mr. Karan Gandhi, Ms. Drishti Kaushik, Mr. Ramakant Rai, Advs.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. Under consideration is an application filed on behalf of Applicant – Axis Bank Ltd., under section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with rule 11 of the National Company Law Tribunal Rules, 2016 with the following prayer:

> *"9.1. Pass necessary orders and directions setting aside and quashing the decision of the CoC taken in its 21st meeting dated 02.04.2025 to revise and reduce the admitted claim and voting share of the Applicant.*
> *9.2. Pass such other orders and directions as this Hon'ble Court may deem appropriate in the facts and circumstances of the case."*

2. Briefly stated the facts of the present case as averred by the Applicant are:

a. The present proceedings relate to the Corporate Insolvency Resolution Process (CIRP) of Sinnar Thermal Power Ltd. (formerly Rattan India Nasik Power Ltd.) ("Corporate Debtor") pending before this Hon'ble Tribunal. This application challenges the decision of the Corporate Debtor's Committee of Creditors ("CoC") in its 21st meeting, which reduced the Applicant's admitted claim and voting share for the purpose of distribution under the Resolution Plan.

b. The Corporate Debtor was originally incorporated as Indiabulls Realtech Limited, renamed Rattan India Nasik Power Limited on 22.12.2014, and subsequently changed to Sinnar Thermal Power Limited on 05.02.2019. It operates five plants, all located in the Additional Sinnar Industrial Area – MIDC SEZ, Musalgaon, and Gulvanch Village, Sinnar Taluka, Nashik District, Maharashtra.

c. The Applicant, a scheduled bank, had extended credit facilities to the Corporate Debtor. Upon filing its claim with the Resolution Professional ("RP"), it became a member of the Corporate Debtor's CoC. The Applicant's claim was admitted for **Rs. 1,291,87,54,896 (Rupees One Thousand Two Hundred Ninety-One Crores, Eighty-Seven Lakhs, Fifty-Four Thousand, Eight Hundred Ninety-Six only)**. In lieu of this admitted claim, the voting share of the Applicant was determined to be 8.12%.

d. The Applicant submitted that there was no subsequent change to the Applicant's admitted claim or its voting share. The RP and the CoC were fully aware that the admitted claim included a bank guarantee of Rs. 8,05,64,000 (Rupees Eight Crores Five Lakhs Sixty-Four Thousand only) issued by the Applicant on behalf of the Corporate Debtor in favor of Mahanadi Coalfields Ltd. ("MCL"). The details of this Bank Guarantee are as follow:

Issuing Bank	BG No.	Issued in favour of	BG Amount
Axis Bank	16090100001093	Mahanadi Coalfields Ltd. [MCL]	Rs.8,05,64,000

e. It is pertinent to note that the Bank Guarantee was invoked by MCL on 27.10.2022, with its encashment deferred solely due to the moratorium under Section 14 of Code. As noted, in all 20 CoC meetings, no change to the Applicant's admitted claim or voting share was ever proposed or contemplated. Even at the issuance of the

Request for Resolution Plan ("RFRP") to prospective Resolution Applicants, the Applicant's claim and voting share remained unchanged at Rs. 1,291,87,54,896 and 8.12%, respectively.

f. The Applicant submits that the Bank Guarantee remains active and is being maintained at its own expense, as the CoC, in its 21st meeting, denied the Applicant the right to recover these costs from the Corporate Debtor. Accordingly, the Applicant was taken aback when the CoC, in the same 21st meeting, passed a resolution reducing its admitted claim and voting share, disregarding its exposure under the Bank Guarantee.

g. The Applicant is therefore confronted with a situation where it is neither reimbursed for maintaining the Bank Guarantee nor is its exposure under the Bank Guarantee recognized by the CoC. Compounding this, the Resolution Plan under the CoC's consideration does not account for the Applicant's Bank Guarantee exposure. In other words, if the Bank Guarantee is encashed post-CIRP—which is inevitable—the Applicant will receive no reimbursement or compensation. The Applicant's reduced and revised share is as follows:

Earlier Claim	Voting Share	Revised Claim	Revised Voting Share
Rs.1291,87,54,896	8.12%	Rs.1283,81,90,896	8.07%

h. The Applicant submitted that it has been placed in a situation where it is neither reimbursed for maintaining the Bank Guarantee nor recognized for its exposure thereunder, which has been disregarded by the CoC. Aggravating the matter, the Resolution Plan under CoC's consideration excludes any provision for such exposure. Consequently, if the Bank Guarantee is encashed post-CIRP—which is likely—the Applicant will receive no reimbursement or compensation, while the plan proceeds will be distributed based on the unlawfully reduced claim and voting share. The Applicant raised this issue through its email dated 25.04.2025, proposing measures to safeguard its position; however, the CoC failed to take any action.

i. It is undisputed that the Applicant's claim of Rs. 1,291,87,54,896 was duly admitted, corresponding to a voting share of 8.12%. The admitted claim and voting share were final and not provisional. The CoC consistently proceeded on this basis for at least 20 meetings, without any challenge or objection. Even when the Resolution Plans were invited, the Applicant's admitted claim and voting share remained unchanged.

j. The Applicant submits that the CoC had no authority under the guise of framing a distribution plan, unlawfully reduce its admitted claim and voting share. The Insolvency Code contains no provision permitting alteration of an admitted claim or voting share in this manner. The Bank Guarantee forms part of the Applicant's admitted exposure, already invoked but pending encashment solely due to the moratorium under the Insolvency Code. Its encashment post-moratorium is inevitable. Even assuming, though denied, that the CoC possesses such power, given that the security interest of all CoC members is identical, there was no justification for reducing the Applicant's claim or voting share on account of its Bank Guarantee exposure.

3. **Reply on behalf of the Respondent No. 1 i.e., RP of Sinnar Thermal Power Limited (STPL)**

a. The Bank Guarantee ("BG") issued by the Applicant in favour of Mahanadi Coalfields Limited ("MCL") for Rs. 8,05,64,000 ("MCL BG") was invoked by MCL on 27.10.2022, with its encashment deferred solely due to the moratorium. Upon cessation of the moratorium, its encashment is inevitable. The Applicant's admitted claim of Rs. 1,291,87,54,896 and voting share of 8.12% were final and remained unchallenged and unrevised since the first CoC meeting.

b. It is submitted that the Applicant's case rests on the assertion that the MCL Bank Guarantee ("MCL BG") was invoked on 27.10.2022 and will be encashed upon cessation of the moratorium following completion of the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor. However, the Application suppresses material facts relevant to the present dispute. Notably, it fails to disclose that the invocation of the MCL BG, vide MCL's letter dated 27.10.2022, is under challenge before the Hon'ble Delhi High Court ("High Court").

The relevant facts material to the adjudication of the present issue are therefore set out below in their proper chronological sequence.

c. Pursuant to the invocation of the MCL Bank Guarantee, the Corporate Debtor filed W.P. (C) 15066 of 2022 titled *Chandan Mishra, Suspended Director of Sinnar Thermal Power Limited v. Union of India & Ors.* before the Hon'ble Delhi High Court ("Writ Petition") on 31.10.2022, challenging the said invocation. The Applicant was impleaded as Respondent No. 4. On the same day, the High Court passed an interim order restraining the Applicant from taking any further steps pursuant to MCL's letter dated 27.10.2022. The relevant portion of the order dated 31.10.2022 is reproduced below:

> *"**Till the next date of listing, the respondent No. 4 shall stand restrained from taking any further steps pursuant to the impugned communication of 27 October 2022.**"*

d. *Further, i*t is pertinent to highlight that the interim order dated 31.10.2022 has been subsequently extended by the High Court *vide* daily order dated 02.02.2023, 18.03.2024 and 10.03.2025 passed in the Writ Petition.

e. In view of the interim order dated 31.10.2022, the Corporate Debtor, vide letter dated 09.02.2023, requested the Applicant to extend the validity of the MCL Bank Guarantee for a further period of two years, i.e., till 31.03.2024. Subsequently, vide letter dated 08.02.2024, MCL also sought an extension of the MCL BG till 31.03.2024.

f. Subsequently, on 22.03.2025, MCL addressed a letter to the Applicant seeking an extension of the MCL Bank Guarantee, which was due to expire on 31.03.2025. Thereafter, the Resolution Professional ("RP"), vide letter dated 27.03.2025, forwarded MCL's request and sought an extension of the MCL BG's validity till 31.03.2026. Pursuant to these requests, the Applicant, through Amendment No. 11 dated 28.03.2025, extended both the validity and claim period of the MCL BG till 31.03.2026.

g. It is submitted that in the 21st meeting of the CoC held on 02.04.2025, one of the agenda items pertained to the approval of the distribution of resolution proceeds. In its commercial wisdom, the CoC resolved to deduct the amount covered under the MCL Bank Guarantee from the Applicant's share of distribution under the Resolution Plan.

h. It is further submitted that at no stage did the Resolution Professional revised or reduced the Applicant's admitted claim or voting share. The Applicant's admitted claim and corresponding voting share of 8.12%, as determined by the IRP/RP, remained unchanged throughout the CIR Process, including up to the 26th CoC meeting, wherein the Resolution Plan submitted by the consortium of Maharashtra State Power Generation Co. Ltd. and NTPC Ltd. was approved by a 100% voting majority.

ANALYSIS AND FINDINGS

4. This Adjudicating Authority has heard the arguments advanced by Learned Counsels for the parties and perused the pleadings, submissions, and documents placed on record.

5. Upon perusal of the records, it is noted that vide order dated 19.09.2022 in CP(IB) No. 2561/ND/2019, this Adjudicating Authority admitted the application and initiated CIRP of the Corporate Debtor.

6. It is the Applicant's contention that the Resolution Professional ("RP") has no authority to alter an unconditionally admitted claim or the corresponding voting share. The Bank Guarantee issued in favour of Mahanadi Coalfields Limited ("MCL BG") was invoked on 27.10.2022, and its encashment remains in abeyance solely due to the moratorium. Accordingly, encashment of the MCL BG upon conclusion of the Corporate Insolvency Resolution Process ("CIRP") and cessation of the moratorium is inevitable. Since the invocation has never been disputed by the RP or the CoC, the admission of the Applicant's claim was rightly premised on this undisputed fact.As per the submission of the Respondent/RP, it has not undertaken any action to revise or alter the Applicant's admitted claim that would affect its voting share. Throughout the CIRP, the Applicant's voting share has remained constant at 8.12%, including at the 26th CoC meeting held on 04.06.2025, where the Resolution Plan was approved with 100% voting support. The relevant excerpts of 26th CoC meeting depicting that voting% of Applicant as 8.12% is quoted below:

"ITEM No. B5

TO CONSIDER AND APPROVE RESOLUTION PLAN SUBMITTED BY MAHAGENCO AND NTPC (IN CONSORTIUM) IN CORPORATE INSOLVENCY RESOLUTION PROCESS OF SINNAR THERMAL POWER LIMITED.

Name of the Financial Creditor	Voting Share %	Vote Cast (%)			
		For	Against	Not Voted	Abstain
Power Finance Corporation Limited	41.19%	41.19%	-	-	-
REC Limited	33.08%	33.08%	-	-	-
Bank of India	8.12%	8.12%	-	-	-
Axis Bank Limited	8.12%	8.12%	-	-	-
Punjab National Bank	2.89%	2.89%	-	-	-
Canara Bank	1.70%	1.70%	-	-	-
LIC Corporation of India	4.90%	4.90%	-	-	-
Total	100%		-	-	-

Note: The said resolution was PASSED as requisite voting in favour of agenda was received."

7. The Respondent submits that the Applicant's grievance arises from the commercial decision of the CoC taken in its 21st meeting on 02.04.2025, wherein the CoC approved the distribution of proceeds under the Resolution Plan. The CoC resolved to deduct INR 8,05,64,000, representing the MCL Bank Guarantee, from the Applicant's distribution share, as the Bank Guarantee remained active and the amount thereunder had not yet become due or payable as it has been extended till 31.03.2026. This position is reflected in Agenda Item No. B2 of the minutes of the 21st CoC meeting. The Respondent submits that such a commercial decision of the CoC cannot be attributed to the Resolution Professional.

8. Upon perusal of the record, it is noted that the Applicant has not approached this Hon'ble Tribunal with complete transparency, having concealed material facts. The Applicant's case rests on the assertion that the encashment of the MCL Bank Guarantee ("MCL BG") is inevitable, delayed only due to the moratorium. However, the Applicant has failed to disclose the crucial fact that the invocation of the MCL BG is currently under challenge before the Delhi

High Court in W.P.(C) No. 15066 of 2022, in which the Applicant is impleaded as Respondent No. 4.

9. We note that the Applicant has concealed the fact that the Delhi High Court, vide its interim order dated 31.10.2022, passed directions in favour of the Corporate Debtor, restraining the Applicant from taking any further action pursuant to MCL's invocation letter dated 27.10.2022. By failing to disclose the pendency of the Writ Petition, the Applicant seeks to portray the encashment of the MCL Bank Guarantee ("MCL BG") as a certainty. It is highlighted that the Writ Petition is sub judice before the Delhi High Court, and therefore, the fate of the MCL BG is contingent upon the outcome of the Writ Petition, not the cessation of the moratorium.It is a settled principle of law that a person must approach the court with clean hands.

10. We observe that the proceedings before the Delhi High Court ("DHC") are relevant and germane to the adjudication of the present lis, as the fate of the MCL Bank Guarantee ("MCL BG") is contingent upon the outcome of the pending Writ Petition. Notably, while the Applicant contends that the DHC proceedings are irrelevant, it has repeatedly extended the validity of the MCL BG. On 22.03.2025, MCL requested the Applicant to extend the MCL BG "to maintain status quo" in accordance with the interim order dated 31.10.2022. Thereafter, on 27.03.2025, the Resolution Professional ("RP") apprised the Applicant of MCL's request and sought the extension of the MCL BG. Pursuant thereto, the Applicant issued Amendment No. 11 dated 28.03.2025, extending the claim period of the MCL BG until 31.03.2026.

11. The RP further submitted that in the 21st CoC meeting held on 04.02.2025, the CoC, in its commercial wisdom, approved a distribution mechanism with a voting majority of 88.9%. The CoC resolved to deduct the amount corresponding to the active Bank Guarantee from the distribution proceeds payable to the Applicant. Subsequently, the Applicant, vide email dated 25.04.2025, belatedly suggested that the portion of distribution corresponding to the MCL BG be parked in a separate account. It is well-settled law that decisions regarding the distribution of proceeds under the CIR Process fall within the commercial domain of the CoC. The Resolution Professional ("RP") has no role in accepting or rejecting suggestions made by the Applicant concerning the treatment of distribution proceeds.

12. In view of the foregoing submissions, we note that the Applicant Bank has failed to prove its contention and accordingly, the present application filed stands dismissed however, without cost.

Sd/-
ATUL CHATURVEDI
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)