

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 395 of 2025

**[Arising out of the Impugned Order dated 07.01.2025 passed by the
Adjudicating Authority, National Company Law Tribunal, Mumbai Bench,
in C.P. (IB) No. 691/MB/2023]**

In the matter of:

Siddharth Satish Katariya

(Ex-Director)

Superfine Extrusions Private Limited

Having its Office at:

1267, Pratibha Dalmandai,

Ahmednagar - 414001

...Appellant

Versus

1. Central Bank of India

Central Office at:

'Chandermukhi ', Nariman Point

Mumbai-400021

Through its Authorized Representative

Mr. Amit Kumar

(Employee No.73695)

Chief Manager

House No.16, Main Mathura Road,

Badarpur Gaon,

New Delhi-110044.

2. Mr. Jitendra Palande,

Interim Resolution Professional

38, 5-3/D, New Ajanta Avenue,

Paud Road, Kothrud,

Pune-411038.

.... Respondents

Present:

For Appellant : Mr. Ashish Mohan, Sr. Advocate with Ms. Sunanda
Tulsyan, Advocate.

For Respondent : Mr. Kunal Tandon, Sr. Advocate with Mr. Tushar Singh,
Ms. Aastha Kaushik, Ms. Natasha, Advocates for R1.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**'IBC'** in short) by the Appellant arises out of the Order dated 07.01.2025 (hereinafter referred to as **'Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-III) in C.P. (IB) No. 691/MB/2023. By the impugned order, the Adjudicating Authority has admitted the Section 7 application filed by the Central Bank of India admitting the Corporate Debtor/Corporate Guarantor into the rigours of Corporate Insolvency Resolution Process (**"CIRP"** in short). Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-suspended Director of the Corporate Debtor.

2. The relevant facts which are required to be noticed for deciding the present matter before us are as follows:

- The Central Bank of India and other banks as a consortium had extended credit facilities to M/s Superfine Metal Pvt. Ltd. (**"SMPL"** in short) as the Principal Borrower. The said loan was inter alia secured by M/s Superfine Extrusions Pvt. Ltd. (**"SEPL"** in short) as one of the Corporate Debtor/Corporate Guarantor.
- A sanction letter dated 27.11.2013 was issued by Central Bank of India wherein certain credit facilities were sanctioned to the Principal Borrower.

- On 22.08.2015, a Corporate Guarantee deed was executed by the Corporate Debtor-SEPL guaranteeing payment to the Central Bank of India Consortium for a principal sum not exceeding Rs.73.61 Cr.
- Another Corporate Guarantee Deed was executed on 18.11.2016 by the Corporate Debtor-SEPL in favour of Central Bank of India consortium for the secured advances by way of Term Loan and Cash Credit not exceeding Rs 92.47 Cr. sanctioned to Principal Borrower-SPML. This Consortium of Bank included Central Bank of India, Indian Bank and Oriental Bank of Commerce (now Punjab National Bank).
- On 26.12.2019, letter of sanction was issued by the Central Bank of India to SPML-Principal Borrower for Ad hoc Limit of Rs 3.70 Crores. Another sanction letter dated 09.09.2020 was issued for FITL Scheme to SPML for a sum of Rs.3,16,90,762/-. In the sanction letters dated 26.12.2019 and 09.09.2020, Bank of Maharashtra got added to the Consortium of Banks.
- On 06.11.2020, a new Corporate Guarantee was executed for the Central Bank of India, Indian Bank, Oriental Bank of Commerce (now PNB) and Bank of Maharashtra.
- On 06.11.2020, a Working Capital Consortium Agreement was also executed between the Corporate Debtor and the Consortium of Bank.
- On 29.11.2020, the accounts of SMPL-Principal Borrower was classified as NPA.

- On 29.06.2022, a Section 13(2) Demand Notice under SARFAESI Act was issued against the SMPL for a default of Rs 86.23 Cr.
- On 02.01.2023, the Consortium of Banks issued a Recall Notice to SMPL, SEPL and other guarantors to the Consortium Agreement to repay the defaulted amount within eight days of the notice.
- Since the defaulted amount was not paid, a Demand Notice was issued by the Central Bank of India-Respondent No.1 to SEPL on 06.03.2023 which was followed by the filing of a Section 7 petition for an amount of Rs 94.71 Cr.
- On 07.01.2025, the Adjudicating Authority admitted the Section 7 application filed by the Central Bank of India-Respondent No.1 holding that the guarantee was invoked on 06.03.2023. SEPL was thus admitted into rigours of CIRP.
- Aggrieved with the said order, the present appeal has been preferred by the Suspended Management of the Corporate Debtor/Corporate Guarantor-SEPL.

3. Shri Ashish Mohan, Ld. Senior Counsel representing the Appellant submitted that the Section 7 petition was not maintainable against the Appellant-Corporate Debtor/Corporate Guarantor. The Deeds of Guarantee of 22.08.2015 and 18.11.2016 which have been purportedly invoked by the Respondent No.1 Bank could not have been relied upon by the Adjudicating Authority since these Guarantee Deeds were insufficiently stamped documents. Being insufficiently stamped, it was contended that these documents were

inadmissible in evidence and should have been impounded in terms of Sections 33 and 34 of the Maharashtra Stamp Act. As the Guarantee Deeds were not stamped appropriately, the said deeds did not constitute a contract and therefore not enforceable in law under the Indian Contract Act. In support of their contention, reliance has been placed on the judgment passed by the Hon'ble Supreme Court of India in ***M/s N.N. Global Mercantile Pvt. Ltd. Vs M/s Indo Unique Flame Ltd. & Ors. in Civil Appeal Nos. 3802-2803 of 2020; Avinash Kumar Chauhan Vs Vijay Krishna Mishra MANU/SC/8502/2008 and Hindustan Steel Ltd. Vs Dilip Construction Company MANU/SC/0474/1969*** in which judgments the Hon'ble Supreme Court held that unstamped documents cannot be acted upon unless the defects are cured. It was asserted that these defects were not rectified prior to invocation of these aforementioned guarantee deeds and hence the guarantee was unenforceable.

4. Submission was pressed that subsequent to the execution of Guarantee Deeds on 22.08.2015 and 18.11.2016, certain further facilities were advanced on 26.12.2019 and 09.09.2020 which was followed by a Working Capital Consortium Agreement dated 06.11.2020 accompanied by a Corporate Guarantee on the same date. Contention was raised that with the execution of a fresh set of loan document and execution of another Deed of Guarantee on 06.11.2020, the earlier guarantees executed by the Appellant stood extinguished as there was a novation of the contract. It was contended that no Section 7 proceeding could have been initiated without invocation of the fresh guarantee dated 06.11.2020. It was also submitted that with the novation of the contract between the Appellant and Respondent, the original contract flowing out of the

guarantees executed on 22.08.2015 and 18.11.2016 were not required to be performed any further.

5. Refuting the contentions raised by the Appellant, Shri Kunal Tandon, Ld. Senior Advocate representing the Respondent No.1 submitted that the alleged insufficiency of stamp duty on the Guarantee Deeds of 22.08.2015 and 18.11.2016, in the facts of the present case, cannot come in the way of the admission of Section 7 petition. In support of their contention, reliance was placed on the judgment of this Tribunal in ***Hiren Meghji Bharani Vs Shankheshwar Properties Pvt. Ltd.*** in ***CA(AT)(Ins) No. 446 of 2023*** wherein it has been clearly held that technical objections like insufficient stamping does not render CIRP proceedings non-maintainable. It was pointed out that the Principal Borrower as well as the Appellant-Corporate Guarantor had already obtained a Stamp Duty Exemption Certificate for the secured property. It was also added that insufficiently stamped Deed of Guarantee was a curable defect and the onus to cure was on the Principal Borrower or by the Corporate Guarantor as it was their obligation to pay the stamp duty. Furthermore, the Principal Borrower had undertaken to pay the deficit stamp duty payable in case any such demand was raised. The deficit was admittedly not paid by the Principal Borrower as no such demand was raised.

6. Submission was further pressed that there was no substance in the argument canvassed by the Appellant that there was a novation of the contract and hence the guarantee amount could not have been claimed without invocation of the new Deed of Guarantee dated 06.11.2020. Repelling the above

contention of the Appellant, it was asserted that non-invocation of the guarantee dated 06.11.2020 was not material since the Corporate Debtor still remained bound by the guarantees which were executed on 22.08.2015 and 18.11.2016. Hence, the Section 7 petition was pretty much maintainable basis the invocation of guarantee of 22.08.2015 and 30.11.2016 and no error was committed by the Adjudicating Authority in admitting the Section 7 application filed by the Respondent Bank.

7. It was emphatically asserted that all that the Adjudicating Authority is required to look into in a Section 7 application is the issue of debt and default. Since the Appellant has not disputed the liability arising out of the discharge of the guarantee obligations in respect of the debt of the Principal Borrower qua the Respondent Bank nor denied the incidence of default, the admission of the Section 7 application by the Adjudicating Authority was in consonance with the statutory provisions of the IBC and in conformity with the judicial precedents of the Hon'ble Supreme Court.

8. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully including Stamp Duty Exemption Certificates of the Principal Borrower and Corporate Guarantor brought on the record by the Respondent by way of an Additional Affidavit.

9. Coming to one of the principal limbs of argument of the Appellant, it is their case that with the coming into existence of the Working Capital Consortium Agreement dated 06.11.2020 and the Corporate Guarantee Deed dated 06.11.2020, the two earlier guarantee deeds of 22.08.2015 and 18.11.2016 had

ceased to exist. The Adjudicating Authority erred in not taking into consideration that the demand made by the Respondent Bank under the guarantee deeds of 2015 and 2016 was illegal and non-est in the eyes of law. Alongwith the execution of entirely new loan documents, there was also a reconstitution of the consortium of lenders with Bank of Maharashtra getting added. As there was a novation of the guarantees, for any Section 7 application to be filed, it was required to invoke the novated Guarantee Deed of 06.11.2020. Since this invocation was not done, the Section 7 application was not maintainable.

10. Per contra, it is the contention of the Respondent Bank that the argument canvassed by the Appellant that following issue of sanction letters of 26.11.2019 and 09.09.2020, there was a novation of contract which necessitated invocation of the subsequent guarantee of 06.11.2020 is misconceived. It was stated that the sanction letters of 26.11.2019 and 09.09.2020 were fully covered by the existing securities which were included in the guarantees dated 22.08.2015 and 18.11.2016. The Working Capital Consortium Agreement executed on 06.11.2020 also clearly mentioned that it was not to affect existing securities. The guarantees issued by the corporate guarantor on 22.08.2015 and 18.11.2016 therefore continued to bind the Corporate Debtor to discharge the debt. When the Corporate Debtor was bound by earlier bank guarantees dated 22.08.2015 and 18.11.2016, there is no force or substance in the plea of the Appellant that there was a need to invoke the guarantee dated 06.11.2020.

11. Before we analyse the rival contentions made by both the parties, it would be useful to notice the guarantees which were executed by the SEPL-Corporate

Guarantor dated 22.08.2015 and 18.11.2016 that have been brought on record by the Appellant. Clause 1 of the Guarantee Deed is as follows:

“This Deed of Guarantee made on this 22nd day of August 2015 by SUPERFINE EXTRUSION PVT LTD, a company incorporated under the Companies Act 1956 and having its registered office at 'Pratibha', 1267 Dalmandai, Ahmednagar hereinafter referred to as the Guarantors which expression shall unless repugnant to context or meaning thereof be deemed to include its successor and assigns in favour of Central Bank of India Consortium represented by Central Bank of India as Lead Bank as defined in the working capital consortium agreement dated 22nd August 2015 (hereinafter referred to as Lead Bank which expression shall unless repugnant to the context or meaning thereof be deemed to include the Central Bank of India and other consortium member banks constituting the Central Bank of India Consortium from time to time or each of them or any one or more of them and their respective successor and assigns) whereas in terms of the working capital consortium Agreement dated 22nd August 2015 and Joint Deed of Hypothecation dated 22nd August 2015 executed by SUPERFINE METALS PVT LTD, a company within the meaning of the Companies Atc 1956 and having its registered office at 'Pratibha', 1267 Dalmandai, Ahmednagar (Hereinafter referred to as the Borrower which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns) with the Lead Bank of the other part on the 22nd August 2015 executed between the Borrower and the Lead Bank (hereinafter the said working capital consortium agreement, Joint Deed of Hypothecation and Supplement Agreement collectively referred to as the said Agreement of Loan) the Lead Bank/Central Bank of India consortium has agreed to grant to the borrower all or some or any of the credit facilities either in Indian or foreign currencies by way of over drafts, cash credits, term loans, pre-shipment credits, opening of letters of credit, issuing of guarantees including deferred payment guarantees and indemnities negotiations and discounting of demand and /or Usance bills and cheques inland as well as foreign and such other facilities as may be agreed upon from time to time between the bank and the borrower (hereinafter called the above mention facilities) for sums not

exceeding in the aggregate the sum of Rs. 73 .61 crores (hereinafter for the sake of brevity referred to as the principle sum) on the terms and conditions specified and contained therein.

....

“1. If any time default shall be made by the borrower in payment of the principal sum (not exceeding Rs 73.61 Crores) together with interest, costs, charges, expenses and/or other money for the time being due to the Central Bank of India consortium in respect of or under the above mentioned credit facilities or any of them the guarantors shall forthwith on demand pay to the Central Bank of India consortium the whole of such principal sum (not exceeding Rs 73.61 Crores) together with interest, costs, charges, expenses and or any other money as may be then due to the Central Bank of India consortium in respect of the above mentioned credit facilities and shall indemnify and keep indemnified the Central Bank of India consortium against all losses of the said principal sum, interest or other money due and all cost, charges and expenses whatsoever which the Central Bank of India consortium may incur by reason of any default on the part of the borrower.”

(Emphasis supplied)

12. Clause 1 of the above Guarantee Deed dated 22.08.2015 clearly stipulates that if at any time default is made by the borrower in making payment, the Corporate Guarantor-SEPL shall forthwith on demand pay to the Central Bank of India amount not exceeding Rs. 73.61 Cr. It is also clear from the language employed in the above Guarantee Deed that the guarantee could be invoked either by the consortium or any of the members. Thus, no bar was placed on individual constituent member of the consortium to proceed with invocation of the guarantee on a default committed by the Principal Borrower.

13. The subsequent Guarantee Deed dated 18.11.2016 reads as follows:

“This Deed of Guarantee made on this 18th day of November 2016 by SUPERFINE EXTRUSION PVT LTD, a company incorporated under the Companies Act 1956 and having its registered office at 'Pratibha', 1267 Dalmandai, Ahmednagar hereinafter referred to as the

Guarantors which expression shall unless repugnant to context or meaning thereof be deemed to include its successor and assigns in favour of Central Bank of India Consortium represented by Central Bank of India as Lead Bank as defined in the working capital consortium agreement dated 18th November 2016 (hereinafter referred to as Lead Bank which expression shall unless repugnant to the context or meaning thereof be deemed to include the Central Bank of India and other consortium member banks constituting the Central Bank of India Consortium from time to time or each of them or any one or more of them and their respective successor and assigns) whereas in terms of the working capital consortium Agreement dated 18th November 2016 and Joint Deed of Hypothecation dated 18th November 2016 executed by SUPERFINE METALS PVT LTD, a company within the meaning of the Companies Act 1956 and having its registered office at 'Pratibha', 1267 Dalmandai, Ahmednagar (Hereinafter referred to as the Borrower which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns) with the Lead Bank of the other part on the 18th November 2016 executed between the Borrower and the Lead Bank (hereinafter the said working capital consortium agreement, Joint Deed of Hypothecation and Supplement Agreement collectively referred to as the said Agreement of Loan) the Lead Bank/Central Bank of India consortium has agreed to grant to the borrower all or some or any of the credit facilities either in Indian or foreign currencies by way of over drafts, cash credits, term loans, pre-shipment credits, opening of letters of credit, issuing of guarantees including deferred payment guarantees and indemnities negotiations and discounting of demand and /or Usance bills and cheques inland as well as foreign and such other facilities as may be agreed upon from time to time between the bank and the borrower (hereinafter called the above mention facilities) for sums not exceeding in the aggregate the sum of Rs. 92.47 crores (hereinafter for the sake of brevity referred to as the principle sum) on the terms and conditions specified and contained therein.

....

1. If any time default shall be made by the borrower in payment of the principal sum (not exceeding Rs 92.47 Crores) together with interest, costs, charges, expenses and/or other money for the time being due to the Central Bank of India consortium in respect of or under the above mentioned credit facilities or any of them the

guarantors shall forthwith on demand pay to the Central Bank of India consortium the whole of such principal sum (not exceeding Rs 92.47 Crores) together with interest, costs, charges, expenses and or any other money as may be then due to the Central Bank of India consortium in respect of the above mentioned credit facilities and shall indemnify and keep indemnified the Central Bank of India consortium against all losses of the said principal sum, interest or other money due and all cost, charges and expenses whatsoever which the Central Bank of India consortium may incur by reason of any default on the part of the borrower.

(Emphasis supplied)

14. Clause 1 of the Guarantee Deed dated 18.11.2016 also clearly stipulated that if at any time default is made by the borrower in making payment, the guarantors shall forthwith on demand pay to the Central Bank of India amount not exceeding Rs. 92.47 Cr. Like in the Guarantee Deed of 22.08.2015, the language employed in the present Guarantee Deed also provided that the guarantee could be invoked either by the consortium or any of the members. Thus, no bar was placed on the Respondent No.1 Bank to proceed with invocation of the guarantee on a default committed by the Principal Borrower.

15. Now that we have noticed the Deeds of Guarantee, we now come to the Guarantee Deed of 06.11.2020 which is based on sanction letters dated 26.12.2019 and 09.09.2020. These sanction letters, according to the Appellant, related to sanction of further amounts and therefore without invoking the guarantee dated 06.11.2020, this rendered the application under Section 7 non-maintainable.

16. We may now have a look at the sanction letter issued by the Central Bank of India consortium to SPML-Principal Borrower on 26.12.2019 with regard to

Ad-hoc Limit of Rs.3.70 Crores for a period of 90 days. Letter dated 26.12.2019 contains following:

“BR/AHMPOO/2019-20/1

Date: 26/12/2019

*SUPERFINE METALS PVT. LTD.,
1267, PRATIBHA, DALMANDAI,
AHMEDNAGAR-414001*

Reg: Adhoc Limit Sanction- Superfine Metal Pvt. Ltd.

Ref: 1) Regional Office Letter no.RO/NAGAR/CREDIT/2019-20/464dated 26/12/2019

2) Zonal Office Letter No. ZO: CR: 2019-20:161 dated 26/12/2019

We are pleased to inform you that your ad-hoc limit proposal has been approved by ZLCC, Pune vide their Agenda Item No. ZO/ZLCC/2019-20/31 DATED 26/12/2019 as under subject to compliance of terms and conditions as stipulated in this letter:

✓ Committee has approved adhoc limit of Rs.3.70 crore for a period of 90 days, subject to compliance of terms & conditions as stipulated under:

- 1. Interest rate- 1 yr MCLR + 3.00% p.a. + additional interest 2.00% p.a. (i.e. ROI for Adhoc Limit 1 yr MCLR + 5.00% p.a)*
- 2. Security-As applicable for existing FBWC limits.*
- 3. Margin-25% on paid stock & 25% on book-debts upto 90 days*
- 4. Processing charges:- Concession of 50% in processing charges on pro rata basis or till adjustment of ad-hoc, whichever is later.*
- 5. Validity:- 90 days. Ad-hoc is to be adjusted on or before the expiry of 90 days from the date of avilment*
- 6. The Ad-hoc limit shall be secured by way of our exclusive charge over the additional current assets created out of the said Ad-hoc limit.”*

Committee Observations:

- 1. You are advised to rectify the observation/s of Stock Audit report.*
- 2. During ad-hoc limit period, any asset insurance falling due for renewal should be got renewed in time.*

3. Committee has observed that you are maintaining current a/c with our bank and other member banks. Whether you have sought specific approval of bank for maintaining current a/c based on necessity of operations? If no such approval taken, kindly give your comments/ justification for routing operations through current a/c instead of CC a/c.

Kindly comply with all the Terms & Conditions and convey your acceptance of the above mentioned Terms & Conditions duplicate copy of this letter for our record.

RAVI KANT
CHIEF MANAGER”

(Emphasis supplied)

17. The other sanction letter dated 09.09.2020 by which an amount of Rs.3,16,90,762/- has been sanctioned under FITL Scheme provides as follows:

BR/AHMPOO/2020-21/FITL/01

Date:09.09.2020

TO:

M/S SUPERFINE METALS PVT. LTD.
PRATIBHA 1267 DALMANDAI
AHMEDNAGAR-414001
MAHARASHTRA

Dear Sir,

REG: SANCTION OF FITL

With reference to your application for FITL SCHEME, We have examined your application based on the application submitted by you and We are pleased to inform you sanction of FITL SCHEME on terms and conditions mentioned in this sanction letter.

1. Name of the Borrower	M/S SUPERFINE METALS PVT. LTD.
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2. Address	PRATIBHA 1267 DALMANDAI AHMEDNAGAR-414001 MAHARASHTRA
3. Purpose of Loan	Deferment of interest in working capital facility.
4. Loan Amount	Rs. 3,16,90,762.00
5.Facility type	Term Loan
6.Rate of Interest	10.30% pa. Rate of interest as being applied on the existing FBWC limit of the borrower.
7.Repayment term	6 Instalment of Rs 52,81,794 + Interest. Commencing from 1 st October 2020. FITL shall be repayable fully not later than 31.03.2021
8.Documentation	Agreement for FITL

OTHER TERMS AND CONDITIONS-

1. Any unpaid arrears of interest/Instalments/Charges pertaining to 01/03/2020, will be repaid before disbursement.

2. The instalments in the term loan falling due during the period from 01/03/2020 to 31/08/2020 in respect of Term Loan will be repaid by you as per the revised repayment schedule by extending the tenor of the loan as allowed in the Regulation Package.

3. All necessary agreements on account of the above deferment of interest/allowing moratorium to be executed before disbursement of FITL.

4. All existing securities in the captioned facilities will continue to be the security for the existing facilities with the revised repayment schedule. Further the said securities will also cover the fresh FITL facility opened to park the interest on the captioned working capital facilities.

(Emphasis supplied)

18. It is relevant to notice that Clause 2 of the sanction letter dated 26.12.2019 clearly mentions that: “*Security- As applicable for existing FBWC limits*” which clearly indicates that existing securities were continuing. Similarly, in the sanction letter of 09.09.2020, Clause 4 clearly mentions that all existing securities in the captioned facilities will continue to be the security for the existing facilities with the revised repayment schedule. It was further mentioned that the said securities will also cover the fresh FITL facility. Thus, both the sanction letters dated 26.12.2019 and 09.09.2020 were fully covered by existing securities included in the guarantees dated 22.08.2015 and 18.11.2016.

19. Before we peruse the Deed of Guarantee dated 06.11.2020, we may first take notice of Part-IV of the Section 7 petition filed by the Central Bank of India which contains the amounts claimed as per all the facilities which is as reproduced below:

Part IV

PARTICULARS OF FINANCIAL DEBT			
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	Total amount of debt granted to Superfine Metals Pvt. Ltd. for which corporate debtor has provided corporate guarantee dated August 22, 2015 and November 18, 2016, and Board Resolution dated August 21, 2015 Rs.66,21,05,008/- (Rupees Sixty-Six Crore Twenty-One Lakh Five Thousand and Eight Only).	
		Nature of Facility	A/C No.
		Amount Disbursed (Rs.)	
		Cash Credit	3056432616
		Term Loan	3305046620
		FITL	3852802470

		<table> <tr> <td>Cash Credit</td><td>3793059834</td><td>3,69,98,840.00</td></tr> <tr> <td>Adhoc</td><td></td><td></td></tr> <tr> <td>Total</td><td></td><td>66,21,05,008/</td></tr> </table> A copy of the disbursement schedule of the principal borrower is hereto annexed and marked as <u>Annexure D.</u>	Cash Credit	3793059834	3,69,98,840.00	Adhoc			Total		66,21,05,008/												
Cash Credit	3793059834	3,69,98,840.00																					
Adhoc																							
Total		66,21,05,008/																					
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	Total Amount of debt in default from the Corporate Debtor is Rs.94,71,23,119.18/- (Rupees Ninty Four Crore Seventy One Lakh Twenty Three Thousand One Hundred and Nineteen and Eighteen Paise Only) The breakup of the said defaulted amount is as under- <table> <tr> <th>Nature of Facility</th><th>A/C No</th><th>Amount Disbursed (Rs.)</th></tr> <tr> <td>Cash Credit</td><td>3056432616</td><td>77,85,36,496.00</td></tr> <tr> <td>Term Loan</td><td>3305046620</td><td>6,68,45,124.18</td></tr> <tr> <td>FITL</td><td>3852802470</td><td>4,15,05,088.00</td></tr> <tr> <td>Cash Credit</td><td>3793059834</td><td>6,02,36,411.00</td></tr> <tr> <td>Adhoc</td><td></td><td></td></tr> <tr> <td>Total</td><td></td><td>94,71,23,119.18/</td></tr> </table> Hereto annexed is the copy of breakup of the defaulted amount for each facility as on 6.03.2023 annexed as <u>Annexure "E"</u> A copy of the System Generated proof for the above-defaulted amount dated March 06, 2023 is annexed herewith as <u>Annexure - F.</u> The Account of the Superfine Metals Private Limited (Hereinafter called as Principal Borrower) was classified as a Non-Performing Asset (NPA) on 29th November 2020. The classification of an account as an NPA is when an account remains not serviced/ in default for a period of Three months. Hence, the date of the first default was 29th November 2020.	Nature of Facility	A/C No	Amount Disbursed (Rs.)	Cash Credit	3056432616	77,85,36,496.00	Term Loan	3305046620	6,68,45,124.18	FITL	3852802470	4,15,05,088.00	Cash Credit	3793059834	6,02,36,411.00	Adhoc			Total		94,71,23,119.18/
Nature of Facility	A/C No	Amount Disbursed (Rs.)																					
Cash Credit	3056432616	77,85,36,496.00																					
Term Loan	3305046620	6,68,45,124.18																					
FITL	3852802470	4,15,05,088.00																					
Cash Credit	3793059834	6,02,36,411.00																					
Adhoc																							
Total		94,71,23,119.18/																					

	<i>A copy of the system generated extract showing proof of NPA dated November 29, 2020 is annexed herewith as Annexure - G.</i> <i>The Financial Creditor issued a notice dated 29th June 2022 under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.</i> <i>Further, a recall notice was addressed by the applicant to the Superfine Metals Private Limited on 02.01.2023 inter alia calling upon the corporate debtor to clear outstanding as mentioned above on or before 10th January 2023. However, the Principal Borrower has failed to rectify the default and the said default continues till date.</i> <i>As per the corporate guarantee deed executed between the Financial creditor and corporate debtor on behalf of Superfine Metals, corporate debtor agreed to pay the amount in case the principal borrower makes a default in repayment of such borrowed amount. A copy of Corporate Guarantee Deeds dated August 22, 2015 and November 18, 2016 and Board Resolution dated August 21, 2015 is annexed herewith as Annexure – H (Colly.).</i> <i>A demand notice was then addressed to the Corporate Guarantor on 6.03.2023 to repay the outstanding loan amount of Rs. 94,71,23,119.18. Hereto annexed as Annexure "I"</i>
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When we look at Part-IV of the Section 7 application, we notice that Cash Credit, Term Loan, FITL and Cash Credit Adhoc are the facilities made by Central Bank of India against which disbursements, default was claimed.

20. We now glance through the guarantee deed dated 06.11.2020 which was guarantee deed executed with regard to Term Loan Facility aggregating to

Rs.114.22 Crores. The relevant extract of the corporate guarantee dated 06.11.2020 is as follows:

“WHEREAS AT THE REQUEST OF THE BORROWER- which is the Group Company of the Guarantor and also on the request of the Guarantor, which is the Group Company of the Borrower, THE LENDER agreed in principle to lend and advance to the Borrower the Term Loan (Hypothecation) facility aggregating to Rs.114.22 Crores (Rs. Rupees One Hundred Fourteen Crores Twenty Two Lacs only), hereinafter referred to as the said Facilities as the context admits, on the terms and conditions mentioned in its respective Sanction Letter dated 24.06.2019, 22.01.2020, 21.09.2019 & 12.08.2020 and also other agreements and security documents entered into between the Borrower and THE LENDER (hereinafter referred to as "the said agreements")”

21. Guarantee Deed of 06.11.2020 was executed by Corporate Guarantor in favour of the Financial Creditor for Term Loan of Rs.114.22 Cr. Further, the Consortium Agreement which was executed on 06.11.2020 between the parties clearly mentions that it was not to affect existing securities. Thus, the reading of the Guarantee Deed of 06.11.2020 does not indicate that it takes away the existing securities.

22. We may now have a look at the Notice of Invocation dated 06.03.2023 which is as follows:

“To,

March 06, 2023

*Superfine Extrusions Private Ltd
1267 Pratibha Dalmandai Ahemednagar-414001*

Subject: Legal Notice for invocation of corporate guarantee and calling upon you to repay the outstanding loan amount of Rs. 94,71,23,119.18/- (Rupees Ninety Four Crore Seventy One Lakhs Twenty Three Thousand One Hundred and Nineteen and Eighteen Paisa).

Reference:

- 1. Recall Notice sent to Superfine Metal Pvt Ltd dtd 02-01-2023*
- 2. Corporate Guarantee deed dated August 22, 2015*
- 3. Corporate Guarantee deed dated November 18, 2016*
- 4. Sanction Letter dated 27-11-2013, 26-12-2019, 09-09-2020 & 19-01-2021*
- 5. Review the Proposal dated January 19, 2021*
- 6. Notice under section 13(2) SARFAESI Act, 2002*
- 7. POA of Mr Abhay Kulkarni*

Sir,

Aware as you are, we the undersigned, and the superfine group shares a Banking relationship for the last couple of years. The Superfine Metal Pvt ltd. approached the Central Bank of India (Lender) with a request for the advancement of a loan facility for an amount of Rs. 66,21, 05,008/- (Rupees Sixty Six Crore Twenty One Lakhs Five Thousand and Eight Only) ("Hereinafter referred to as the said Loan").

The bank has sanctioned the credit facilities wide sanctioned letter dated 27-11-2013, 26-12- 2019, 09-09-2020, 19-01-2021. Loan was disbursed from time to time to Superfine Metal Pvt Ltd wherein your company has given corporate guarantee.

We have to inform you that the principal borrower i.e. Superfine Metals Pvt Ltd has committed defaults in payment of their liabilities and consequently their account has been classified as a non-performing asset. A copy of the notice dated 29.06.2022 under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Recall Notice dated 02.01.2023 sent by us to the Principle borrower is enclosed.

Since the borrower has committed defaults. in terms of the guarantee deed dated August 22, 2015 and November 18, 2016, Superfine Extrusions Pvt Ltd have become liable to pay to us the outstanding amount of loan/credit facilities aggregating balance 0/s as of 06.03.2023 Rs 94,71,23,119.18/- (Rupees Ninety Four Crore Seventy One Lakhs Twenty Three Thousand One Hundred and Nineteen and Eighteen Paise) exclusive of other charges, and we hereby invoke the corporate guarantee and call upon you to pay the said amount within

10 days from the date of this notice, failing which we have been instructed to initiate the legal proceeding including but not limited to appropriate legal actions under the provisions of Insolvency & Bankruptcy Code, 2016.

The cost of the notice being INR 25,000/- are a lien on you.

Please note. Hence, the notice.

Yours sincerely,

(ABHAY KULKARNI)

MANAGER

Ahmednagar.”

23. Now we proceed to answer the question as to whether there was a novation of contract between the parties which necessitated invocation of Guarantee Deed of 06.11.2020 to render the Section 7 application maintainable. We notice that even though sanction letters were issued on 26.12.2019 and 09.09.2020 for Ad-Hoc Limit and FITL by the Respondent Bank in respect of which the Appellant-Corporate Debtor/Corporate Guarantor had given a guarantee on 06.11.2020, the sanction letters had clearly mentioned that the securities which were covered in the guarantees dated 22.08.2015 and 18.11.2016 were to continue. Thus, the guarantees issued by the Corporate Guarantor on 22.08.2015 and 18.11.2016 continued to hold ground. Thus, the Corporate Debtor continued to remain bound by the earlier bank guarantees dated 22.08.2015 and 18.11.2016 to discharge the debt liability of the Principal Borrower. We cannot accept the submission of the Appellant that Guarantee Deed dated 06.11.2020 which was for term loan of Rs 114.22 Cr. had wiped off the earlier guarantees. We cannot view this as a novation of contract between the parties. The invocation of

guarantee on 06.03.2023 by the Bank was therefore a correct invocation which obligated the Corporate Guarantor to clear the dues.

24. We also do not find any merit in a related contention raised by the Appellant that the Respondent No.1 Bank being one of the constituents of the consortium of banks which had extended credit facilities to the Principal Borrower, it could not have filed the Section 7 application on its own. We are not inclined to agree with the above contention of the Appellant. The wordings employed in the Deed of Guarantee indicate that it gave independent and separate rights to the consortium members including Respondent No.1 Bank to realise their debt. Merely because the Respondent No.1 Bank was a member of the consortium can in no manner come in their way to file a Section 7 petition independently. Hence, when the loan account of the Principal Borrower had been declared NPA on 29.11.2020, each of the consortium members was entitled to file the Section 7 application on their own steam without any need of consent or approval or permission from the other members. That being so, the right of the Respondent No.1 Bank to file the Section 7 petition cannot be questioned.

25. This brings us to the second limb of argument of the Appellant that Deeds of Guarantee of 22.08.2015 and 18.11.2016 could not have been relied upon by the Adjudicating Authority since these Guarantee Deeds were insufficiently stamped documents and the defects not having been cured, the Guarantee Deeds were not enforceable in law.

26. Per contra, it is submitted by Respondent No.1 that the Working Capital Consortium Agreement of 22.08.2015 entered into by the Principal Borrower was

for the same property for which Stamp Duty Exemption Certificate was given. When the Appellant was in possession of a Stamp Duty Exemption Certificate which covered their property which had been mortgaged to secure the loan sanctioned to the Principal Borrower, they have no ground to raise this plea to contend that the Guarantee Deed suffered from any infirmity. The Corporate Guarantee Deed being exempt from payment of stamp duty under Section 4 of the Maharashtra Stamp Act, the objection of the Appellant that the Guarantee Deeds were insufficiently stamped in terms of the provisions of the Maharashtra Stamp Act is untenable.

27. Before we answer the question about the inadmissibility of the Guarantee Deed on account of insufficient stamping, it may be worthwhile to notice the Stamp Duty Exemption Certificates in possession of the Principal Borrower and the Corporate Guarantor. The Stamp Duty Exemption Certificate of the Principal Borrower which has been produced on record by the Respondent Bank in their Additional Affidavit reads as follows:

Date: 10 SEP. 2007

CERTIFICATE

M/s Superfine Metal Pvt. Ltd., Plot No. E-29 & E-39 M.I.D.C. Supa, Tal-Parner, District-Ahmednagar situated here for proposed new industries, this unit is certified as New Project as per Government Order No. Mudrank/2007/Pra.Kra. -196(1)/M-1, dated 12/06/2007 under Bombay Stamp Duty Act 1958.

This certificate is issued as per above Government Order under Bombay Stamp Duty Act 1958 for exemption of Stamp Duty. This certificate is issued for land transfer letter from Maharashtra Industrial Development Corporation situated at Plot No. E-29 & E-39 M.I.D.C. Supa, Ta-Parner, District-Ahmednagar, lease deed and execution of Bank loan hypothecation, mortgage deed Other agreements.”

28. A similar Stamp Duty Exemption Certificate of the Corporate Guarantor which has been produced on record by the Respondent Bank in their Additional Affidavit reads as follows:

Date: 05.10.2004

CERTIFICATE

“M/s Superfine Extrusion Pvt. Ltd.,

Factory address- Gat No. 53, KM No. 17, Mu. Post. Bhalwani, Taluka Parner, District Ahmednagar, unit is ~~being established~~ / established here. This unit is certified as ~~new business~~/extension of new business as per Government Order No. Stamp 2000/4229 Pra. kra. 1064/M-1 dated 05.05.2001 under Bombay Stamp Duty Act 1958.

This certificate is issued as per above Government Order under Bombay Stamp Duty Act 1958 to said industrial unit to get exemption from registration fee and stamp duty for availing the loans from Bank for expansion of industrial unit.”

29. We therefore find that both the Principal Borrower and the Corporate Guarantor who were involved in the loan transaction held valid Stamp Duty Exemption Certificates. The SPML-Principal Borrowers' Certificate covered Plot No. E-29 and E-39, Taluka Parner, Distt. Ahmednagar which was offered as primary security for the loan. Similarly, the property described at page 760 of Appeal Paper Book in Corporate Guarantor-SEPL's own stamp duty exemption certificate viz. GAT No. 53, Km No. 17, Post Bhalwani was the same property which was mortgaged to secure the loans sanctioned to the Principal Borrower. The above properties referred to in the Stamp Duty Exemption Certificates were the same properties as was mentioned in the Section 13(2) SARFAESI Notice. Even at that stage, no objections were raised regarding insufficient stamping.

Again, when the sanction letters of 26.11.2019 and 09.09.2020 were issued, there was not even a whisper of protest by the Appellant with regard to insufficiency of stamp duty in the said Guarantee Deeds. Once the opportunity available to object to the admissibility of the document was not availed by the Appellant, the validity of the document cannot be ignored, discarded or wished away by them now.

30. We also notice that the Principal Borrower had sworn an affidavit affirming that they have with them a Stamp Duty Exemption Certificate which is applicable for bank loan agreements and that, if necessary, they would pay in case stamp duty was payable by them. This letter is as extracted below:

“Superfine Metals Pvt Ltd has received 100% stamp duty exemption certificate No B-22234 from Directorate of Industries. The stamp duty exemption certificate is applicable for bank loan agreements and documentations.

We hereby undertake that in case stamp duty is payable on the agreements executed by us, we shall pay the stamp duty immediately along with penalty if any thereon.”

For Superfine Metals Pvt Ltd

Director

Date: 06.11.2020

Place: Ahmednagar

31. We are of the view that that insufficiently stamped Deed of Guarantee is a curable defect and the onus to cure the same was on the Principal Borrower or the Corporate Guarantor as it was their obligation to pay the stamp duty. Furthermore, we find that the Principal Borrower had even undertaken to pay the deficit stamp duty payable in case any such demand was raised. The deficit

was admittedly not paid by the Principal Borrower as no such demand was raised. In such circumstances, when the Principal Borrower was expressly aware of the stamp duty that was required to be paid and having given an explicit undertaking to pay for any shortfall, they had ample opportunity to remedy the purported deficiency in the stamp duty payment. Since neither the Principal Borrower nor Corporate Guarantor took any corrective steps in this direction, the Appellant as the Corporate Guarantor cannot be seen to take undue benefit of inaction/lapse on their own part to cure the defect. The Adjudicating Authority had correctly applied the ratio of the decision of the Hon'ble Supreme Court in ***N.N. Global Mercantile*** judgement supra in holding that technical deficiencies like insufficient stamp duty being curable, and the same not having been cured, there was no good ground placed by the Appellant to demonstrate that the Guarantee Deeds could not have been taken into cognisance as they were insufficiently stamped. We are inclined to agree with the Respondent No.1 Bank that the issue of insufficient stamping has been raised as an after-thought in the present appeal and that such technical objections cannot be a ground to defeat the substantive rights of the Respondent Bank to initiate insolvency proceedings against the Corporate Debtor/Corporate Guarantor.

32. The core issue of any insolvency proceeding is debt and default. Debt and default have not been contested by the Appellant. There is no submission of the Appellant that no amount is due qua their guarantee obligations. The Appellant has only tried to get over their liabilities on the ground that the earlier contract of guarantee having been novated, there was no liability on the part of the Corporate Guarantor until the new Guarantee Deed was invoked and on the

ground that no occasion had arisen for the Appellant to discharge their liabilities due to insufficient stamping of the Guarantee Deeds. For detailed reasons stated above, both these grounds have been found to be devoid of merit. The admission of the Section 7 application cannot be obfuscated or defeated by raising such unfounded technical pleas. In the present case, when debt and default is undisputedly established, the Adjudicating Authority did not commit any error in accepting the Section 7 application.

33. We do not find any error in the order passed by the Adjudicating Authority admitting Section 7 application. There is no merit in the Appeal. The Appeal is dismissed with no order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Place: New Delhi

Date: 25.09.2025

Abdul/Harleen.