

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – III**

C.P. (IB) 691/MB/2023

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

In the matter of

Central Bank of India

Having its Central Office at:

‘Chandermukhi’, Nariman Point,
Mumbai – 400 021.

Having its Regional Head Office at:

P-56, Nagapur MIDC,
Near BSNL Office,
Ahmednagar, Maharashtra – 414 111.

... Petitioner/ Financial Creditor

Versus

Superfine Extrusions Private Limited

1267, Pratibha, Dalmandai,
Ahmednagar, Maharashtra – 414 001.

...Corporate Debtor/ Respondent

Order Pronounced on: 07.01.2025

Coram:

Charanjeet Singh Gulati
Hon’ble Member (Technical)

Lakshmi Gurung
Hon’ble Member (Judicial)

Appearances:

For the Financial Creditor: Adv. Rahul D. a/w Adv. Avdhoot Prabhu i/b Adv.
Memon

For the Corporate Debtor: Adv. Rohit Gupta and Adv. Prashansa Aggarwal

Per: MR. CHARANJEET SINGH GULATI, MEMBER (Technical)

1. The present **Company Petition (IB) – 691 (MB)/2023** has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **‘Code’/ ‘IBC’**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Central Bank of India (hereinafter referred to as **‘Financial Creditor’/ ‘Central Bank’**) for initiating Corporate Insolvency Resolution Process (hereinafter referred to as **‘CIRP’**) against Superfine Extrusions Private Limited (hereinafter referred to as **‘Corporate Debtor’/ ‘Corporate Guarantor’**).

Brief facts of the case:

2. Central Bank of India, the Petitioner herein, is a public company (limited by guarantee) designated as a Public-Sector Bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. It continues its practise of offering a range of financial services as a ‘Commercial Bank’.
3. M/s Superfine Metals Private Limited (**‘Principal Borrower’**) made a request for obtaining credit facilities from to the Financial Creditor, in addition of its account maintained with the Ahmednagar Branch of Central Bank of India. This credit facility was requested for meeting the estimated/projected levels through a second expansion comprising working capital expenditure, for construction of Factory Building and Purchase of Machinery.

4. The Financial Creditor consequently extended financial assistance to the Principal Borrower vide Sanction Letter dated 27.11.2013 and in accordance with the decision of Head Office Level Credit Approval Committee vide Agenda No.: HLCC-2/47/2013-1417/01 in its meeting held on 22.11.2013 (**'said Financial Assistance'**). In furtherance to the said sanction letter an amount of Rs. 63.43 Crores (Rupees Sixty-Three Crores and Forty-Three Lakhs Only/-) was granted by the **'Consortium of Banks'** comprising Central Bank of India (as the 'Lead Bank'), Indian Bank, Punjab National Bank and Bank of Maharashtra. The Principal Borrower is to comply with all terms and conditions as laid down in the said Sanction Letter.
5. The bifurcation of said loan extended by the Financial Creditor outside consortium under the sole banking arrangement is as under (**'said Loan'**):

Sr. No.	Date of Sanction ('said sanction letter')	Date of Disbursement	Account Number ('said Loan Account')	Type of Facility Extended ('said Facility')	Amount Sanctioned (In Rupees)	Remarks (Manner of Disbursement)
1.	27.11.2013	04.12.2013	3305046620	Term Loan	20,00,00,000	In instalments. The last instalment was disbursed on 24.02.2014.
2.	26.12.2019	26.12.2019	3793059834	Cash Credit - Ad-hoc	3,70,00,000	In lumpsum

3.	09.09.2020	30.09.2020	3852802470	Funded Interest Term Loan (FITL)	3,16,90,762	In lumpsum
4.		02.04.2013	3056432616	Cash Credit	52,00,00,000 (enhanced as on 26.06.2019, at intervals from an initial limit of Rs. 7,00,00,000)	In instalments

6. Further, the Financial Creditor vide agenda item no. HLCC 2/248/2020-21/18/02 reviewed the said Loan Account of the Principal Borrower and sanctioned the following subject to compliance of terms and conditions mentioned in the Sanction Letter dated 19.01.2021 (**said Renewed Sanction Letter**). An extract from the said Renewed Sanction Letter is provided as under:

- a) Approved FBWC limit at existing level of Rs. 100.00 crs and NFBWC limit of Rs. 13.00 crs for the consortium as a whole in the capacity of lead bank.*
- b) Renewed our part of FBWC limit at existing level of Rs. 52.00 crs and NFBWC limit of Rs. 5.00 crs in the consortium for a period of 6 months.*
- c) Reviewed Term Loan IV at notional balance of Rs. 4.28 crs on existing terms and conditions.*
- d) Continued margin for LC @ 10% against applicable margin of 25%*
- e) Continued 50% concession in processing and lead bank charges.*

f) Approved waiver of penal interest of Rs. 2.68 crs (Not yet recovered) for the period of 01.04.2011 to 25.07.2018 pointed out in Special Audit of the Branch in August 2019 on account of delay in submission of external rating.”

7. The said loan is secured by corporate guarantee of M/s Superfine Extrusions Private Limited (**‘Corporate Guarantor’/ ‘Corporate Debtor’**). The Corporate Guarantor secured the Facility for a principal debt of not exceeding Rs. 73.61 Crores (and also includes interests, costs and other money payable) which was later enhanced to Rs. 92.47 Crores vide a Deed of Guarantee executed on 22.08.2015 and 18.11.2016 (**‘said Deed of Guarantee(s)’**), respectively. The guarantee is a continuing one for all amounts advanced by the consortium to the Principal Borrower on such terms as agreed upon in the deed of guarantee.
8. The Corporate Guarantor [U27203MH1997PTC112093] is a public company (limited by shares) incorporated under the Companies Act, 1956, registered with the Registrar of Companies (‘RoC’) at Pune. The Corporate Guarantor is engaged in the manufacture and sale of aluminium extruded sections and profiles.
9. Further, the said loan was secured by Deed of Hypothecation against tangible movable assets of the principal borrower, situated in Plots E-29 & E-39, Supa MIDC, Tal. Parner, Dist. Ahmednagar (**‘said Factory Premises’**).
10. An Inter-Se Agreement was executed amongst the Consortium of Banks on 22.08.2015 and 18.11.2016 that the Principal Borrower has availed Working Capital Facility to meet its working capital needs at the said Factory Premises, in the proportion as mentioned in the Working Capital Consortium Agreement dated 22.08.2015. The Principal Borrower in pursuance to the agreement created in favour of the said

Consortium of Banks (which then comprised of Central Bank of India (as lead bank), Indian Bank and Oriental Bank of Commerce), created the following charges as follow:

- a. A first pari-passu hypothecation charge on all current assets (present and future, wherever located) related to the borrower/division at the factory premises or elsewhere as specified in the agreement.
- b. A second charge on all movable and other movable fixed assets (present and future) of the borrower/division at the factory premises.

11. Further, the Principal Borrower in order to facilitate its object of construction of factory building and purchase of plant and machinery availed a term loan for a sanctioned aggregate limit of Rs. 1.22 Crores from the Applicant/CBI, which was secured by a Joint Deed of Hypothecation dated 06.11.2020. The said Joint Deed of Hypothecation was executed by the Principal Borrower in favour of consortium of banks comprising Central Bank of India (Lead Bank), Indian Bank, Punjab National Bank and Bank of Maharashtra.

12. The said Joint Deed of Hypothecation was secured as per the terms agreed upon by the parties, which can be summarised as:

- a. A first pari-passu charge is created over the movable property (including new machinery purchased) of the principal borrower comprising of such description at its said Factory Premises or wherever else the same may be included in transit.
- b. A second pari-passu charge is created over whole of the current assets of the principal borrower comprising of such description situated at its said Factory Premises or wherever else the same may

be or may be held by any party to the order or disposition of the borrower or in course of transit.

13. The principal borrower obtained a working capital credit facility of Rs. 114.22 Crores from a consortium of banks (Central Bank of India (Lead Bank), Indian Bank, Punjab National Bank, and Bank of Maharashtra) under a Working Capital Consortium Agreement dated 06.11.2020. This agreement was secured by a Joint Deed of Hypothecation for Working Capital, dated 06.11.2020.
14. The said Joint Deed of Hypothecation for Working Capital was secured as per the terms agreed upon by the parties, which can be summarised as:
 - a. A first pari-passu charge on all of the borrower's current assets, wherever located (at the factory premises, in transit, on the high seas, or held by any party to the borrower's order), including any substitutions or additions.
 - b. A second pari-passu charge on all movable plant, machinery, spares, stores, and other movable fixed assets located at or brought to the borrower's factories, premises, and godowns mentioned in point a.
15. The principal borrower was issued a certificate for registration of mortgage dated 14.03.2013 under Sections 132 of the Companies Act, 1956 by the Registrar of Companies at Pune, Ministry of Corporate Affairs – Government of India. This charge secures a cash credit facility of up to Rs. 43,50,00,000, covering the principal, interest, and related charges until full repayment.
16. Further, statutory modification of mortgage was given effect in regards enhancement towards the said cash credit facility under Section 132 read with Section 135 of the Companies Act, 1956/ Section 79(b) of the

Companies Act, 2013 and Rule 6(2) of Companies (Registration of Charges) Rules, 2014 was made in favour of CBI/Consortium of Banks.

17. The said Account of the Principal Borrower was declared as a Non-Performing Asset (**'N.P.A.'**) on 29.11.2020.
18. Upon consequent defaults committed by the Principal Borrower in payment of principal, interest and other monies as due in terms of said sanction letter, the Financial Creditor issued a notice under Section 13(2) of the Securitization and Assets Reconstruction and Enforcement of Security Interest Act, 2002 (**'SARFAESI'**) on 29.06.2022 for recovery of Rs. 86,23,97,956.18 (**'Demand Notice'**).
19. Later, a recall notice was serviced through RPAD-Acknowledgement Due to Corporate Guarantor as on 02.01.2023, for clearing the outstanding debt of Consortium of Banks on or before 10.01.2023. The amount payable in regards to Central Bank is calculated as Rs. 92,45,80,781/-, payable within *eight days* of the issue of said notice (**'said recall notice'**). The said outstanding dues is bifurcated in relation to corresponding account numbers as "Annexure -BB" copy of outstanding balance certificate dated 02.01.2023 issued by the Central Bank, towards the said Facility as:

Sr. No.	Account Number	Outstanding Dues as on 02.01.2023 (in Rupees)
1.	3056432616	75,98,46,248.00
2.	3305046620	6,55,92,720.00
3.	3852802470	4,06,38,375.00
4.	3793059834	5,85,03,438.00
Total		92,45,80,781.00

20. A calculation of amount disbursed to the Principal Borrower and outstanding amount payable (along with interest and penal interest) is

provided by the Financial Creditor at ‘Annexure-D and Annexure - E’ of the petition respectively, which can be summarised as follows:

Sr. No.	Account Number	Amount Disbursed (in Rupees)	Outstanding Amount to be Repaid, inclusive of interest and penal interest (in Rupees)
1.	3056432616	5,74,35,50,450	77,85,36,496
2.	3305046620	6,55,92,720.00	6,68,45,124.18
3.	3852802470	4,06,38,375.00	4,15,05,088
4.	3793059834	5,85,03,438.00	6,02,36,412
Total		92,45,80,781.00	94,71,23,120.18

21. The Financial Creditor has issued a certificate under section 2A(b) of Banker’s Book Evidence Act, 1891 dated 20.01.2023 thereby certifying the authenticity of data pertaining to principal borrower as disclosed in the petition. The Accounts of the principal borrower is stated to correctly represent the data derived from the system and electromagnetic data storage device at the Financial Creditor’s Office situated at Ahmednagar, Maharashtra (**‘said certificate under Banker’s Book Evidence Act’**).

22. The Corporate Guarantee was invoked by the Financial Creditor as given in ‘Annexure-I’ of the Petition vide Demand Notice dated 06.03.2023, for payment of outstanding amount of Rs. 94,71,23,119.18 exclusive of other charges (**‘said outstanding dues’**), payable within ten days from the date of this notice (**‘said Guarantee Invocation Notice’**). The Corporate Guarantor failed to reply to the said Guarantee Invocation Notice therefore, failing to repay the outstanding dues on 16.03.2023 (**‘date of default’**).

Submissions of the Corporate Debtor/Corporate Guarantor extracted in brief:

23. The Corporate Debtor reiterates the facts of the present petition stating the said Deed of Guarantee was executed in favour of the petitioner for securing the said Facility sanctioned to M/s Superfine Metals Private Limited/ Principal Borrower. Further, the said Loan Account of the Corporate Debtor was classified as NPA on 29.11.2020 and the said Guarantee Invocation Notice was issued on 06.11.2023.

24. The Corporate Debtor bases its submissions on the following grounds which is summarised as under:

I. Petition barred under Section 10-A of the Code

The Corporate Debtor states that since the said Loan Account was declared as a NPA on 29.11.2020 (being the date of first default), the petition becomes barred by Section 10-A of the Code as the date of declaration of N.P.A. is the date of default instead of date of invocation of corporate guarantee, which falls within the period between 25.03.2020-25.03.2021.

II. Failure to produce the Deed of Guarantee which was executed to secure the said Facility

- a. The Corporate Debtor submits that there is no default to the Financial Creditor because the said Deed of Guarantee(s) only entitles it to oblige to the consortium demand under separate working capital loan transaction of consortium which does not include Ad-hoc and FITL Facility.
- b. It is emphasised that since the latter Facility were sanctioned for the first time vide Sanction Letters dated 26.12.2019 and 09.09.2020, respectively. Therefore, these facilities could not

have been guaranteed in years 2015 and 2016. A part claim of the Petitioner is not guaranteed hence, both demand and claim under the Petition are incorrectly claimed thereby rendering the Petition liable to be dismissed.

- c. The said Demand Notice was addressed by the Financial Creditor in regards to debt under Sole Banking Arrangement than that of the consortium thus, failing to establish the 'guarantee' and/ or invocation of said Deed of Guarantee(s) as against the corporate debtor.
- d. A reliance is placed on ***Vidharbha Industries Power Limited versus Axis Bank Limited, 2022 SCCOnLine SC 841*** stating that the Corporate Debtor is a going concern and is in good financial health and is in no manner an insolvent company.

III. Insufficiently stamped said Deed of Guarantee(s)

The Corporate Debtor contends that the given deeds are insufficiently stamped as per Section 33 of the Indian Stamp Act, 1899 on Rs. 100 stamp paper and is inadmissible in evidence and are required to be impounded. The deed was to be stamped under Article 5 Clause (h)(A)(iv)(b) of the Maharashtra Stamp Act, 1958 and a stamp duty was payable as 0.2% of the amount agreed in the said Deed of Guarantee. Therefore, the said Deed of Guarantee is insufficiently stamped and is not a contract enforceable by law under section 2(h) of the Indian Contract Act, 1881.

IV. Failure to produce relevant documentation executed for sanctioning the Facility

The Corporate Debtor states that the Petitioner has failed to place on record the accounts for any year and the Facility Agreement containing terms and conditions of loan disbursement and repayment. Therefore, there is no proof of disbursement, repayment and default.

V. Inconsistencies in the present Company Petition

The Corporate Debtor states that the petitioner has preferred a claim against the Principal Borrower in **C.P. No. 232 of 2023**. The corporate debtor further states that the financial creditor sought amendment to latter petition however, the same was not reflected in the present petition. It is emphasised that present petition suffers from the same inadvertent errors in that case and would be required to be amended, as a creditor cannot be permitted to make inconsistent claims in the Petition against the principal borrower and guarantor. The details of the amendment in C.P. No. 232 of 2023 are given as under:

Sr. No.	Particulars	Amendment sought in Petition against borrower	Captioned Petition
Cash Credit Facility			
1.	Default Amount	52,47,99,252.30 (as on 10.03.2023)	77,85,36,496 (as on 06.03.2023)
2.	Date of Default	10.03.2020	29.11.2020
Ad-hoc Facility			
1.	Default Amount	3,73,78,272.80 (as on 24.03.2023)	6,02,36,411 (as on 06.03.2023)
2.	Date of Default	24.03.2020	29.11.2020

VI. Difference in the amount secured

The Corporate Debtor states that in the present petition the amount disbursed towards Term Loan A/c No. 3305046620 is Rs. 5,06,70,198/- and amount due as on 06.03.2023 is Rs. 6,68,45,124/-. It is evident from the Working Capital Consortium Agreement dated 22.08.2015 and 18.11.2016 that the term loan referred therein is Rs. 2.47 Crores which is guaranteed under the said Deed of Guarantee and not the alleged Term Loan of Rs. 5,06,70,198/-.

VII. Consideration of additional documents in Interlocutory Application filed by Corporate Debtor

The Corporate Debtor files an I.A. No. 497 of 2024 in C.P. 691 of 2023 on 06.02.2024 to bring on record additional relevant documents crucial for the adjudication of the said Petition, which is summarised as:

a. Actual amount secured vide Deed of Guarantee(s)

- i. The said Deed of Guarantee(s) dated 22.08.2015 secured an amount of Rs. 73.61 Crores sanctioned by the Consortium of Banks vide Working Capital Consortium Agreement dated 22.08.2015 against which only an amount of Rs. 40.11 Crores was sanctioned by the Petitioner.
- ii. Thereafter, the said Facility were enhanced and vide the Deed of Guarantee dated 18.11.2016 an aggregate amount of Rs. 92.47 Crores was sanctioned by the consortium under Working Capital Consortium Agreement dated 18.11.2016. Out of the said amount of Rs. 92.47 Crores, the Deed of Guarantee had only

guaranteed a principal amount of Rs. 50.47 Crores. The Petitioner has admittedly demanded a principal amount of Rs. 66.21 Crores from the Respondent by invoking the Deed of Guarantee dated 18.11.2016 which is clearly beyond the amount of Rs. 50.47 Crores guaranteed under Deed of Guarantee.

- iii. Lastly, in the year 2020, the lending limits were enhanced to Rs. 114.22 Crores. The consortium comprised of Central Bank of India, Indian Bank, Punjab National Bank and Bank of Maharashtra. Accordingly, a new Loan Agreement as well as Hypothecation Agreement was executed. The Deed of Guarantee dated 18.11.2016 for Rs. 92.47 Crores was substituted by afresh Guarantee dated 06.11.2020 for Rs. 114.22 Crores. As given in I.A. No. 497 of 2024, therefore the Deed of Guarantee was novated and ceased to exist.

b. Nullity and Novation of said Deed of Guarantee(s)

- i. It is not even the case that the new Guarantee Deed dated 06.11.2020 was executed only to secure the additional amounts and therefore the earlier Guarantees could be said to remain in force. Instead, the new Guarantee was clearly executed to secure the aggregate limit of Rs. 114.22 Crores thereby substituting and novating the old Guarantee dated 18.11.2016.
- ii. It is submitted that execution of subsequent guarantee ipso facto nullified and novated earlier guarantee. Continuing guarantee is not the argument available to the Petitioner herein as there is fresh guarantee executed by

the parties. Subsequent contract will therefore govern the terms. It is further pertinent to note that this is not a case of novation by variation in terms but a joint novation by fresh execution of contracts.

- c. It is thus submitted that the said Deed of Guarantee (s) were substituted and had ceased to exist as per Section 62 of the Contract Act, 1872. Therefore, the Respondent's obligation/liability could only be said to remain under the new Guarantee deed. Reliance is placed on the judgment of **Satish Chandra Jain Vs. National Small Industries Corporation Ltd. and Ors., AIR 2003 SC 623** wherein it was held that the subsequent guarantee deed amounts to guarantee, even though it did not expressly terminate the earlier guarantee. Further, the Hon'ble High Court of Delhi in the matter of **Rajan Malhotra & Anr. vs Union Bank of India & Ors., 2019 SCC OnLine Del 11177**, held that after execution of fresh loan documents and guarantee, the earlier guarantee cannot be invoked.

Thus, the corporate debtor states that the consortium of banks cannot invoke guarantee at present and demand the alleged amount due from the Respondent, the debt as against the principal borrower has become time barred and guarantee cannot be invoked for a time-barred debt.

Submissions of the Financial Creditor extracted in brief:

25. The Financial Creditor relies on the Deed of Corporate Guarantee dated 22.08.2015 and 18.11.2016 executed towards the said loan provided to the principle borrower as given under Annexure - 'H Colly' of the petition. It states that the corporate debtor herein is the guarantor to

the said Facility advanced by the financial creditor to M/s Superfine Metals Private Limited/ Principal Borrower.

26. The learned counsel of the financial creditor rebuts the grounds as relied upon the Corporate Debtor as follows:

- a. The Corporate Guarantor as per clause 1 and clause 13 of the said Deed of Guarantee(s) is liable to pay the amount to the Financial Creditor forthwith on demand and *“The Guarantors shall forthwith on demand made by the Central Bank of India consortium deposit...”*
- b. Further the Deed of Guarantee(s) secures all credit facilities availed by the principal borrower from the Central Bank or the consortium. consortium. An extract of the Deed of Guarantee(s) is relied as under:

“...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 overdrafts, cash credits, term loans, pre-shipment credits, opening of letters of creditand such other facilities as may be agreed from time to time between the bank and the borrower”

- c. The Deed of Guarantee(s) is executed not only in favour of the Consortium of Banks but also in favour of each of the members of consortium including the Central Bank. An extract from the Deed of Guarantee(s) is drawn as under:

*“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...**”*

- d. It is refuted that the demand notice was issued to the corporate debtor on 06.03.2023 which is outside the period prescribed under Section 10-A of IBC. The Financial Creditor asserts the settled position of law that in case of a corporate guarantee which is payable on demand, the default occurs when a demand is made by the financial creditor and there is a failure to pay the amount under the guarantee. A reliance is placed on the decision of the Hon'ble National Company Law Appellate Tribunal in ***Pooja Ramesh Singh versus State Bank of India, Company Appeal (AT) No. 329 of 2023*** dated 28.04.2023 wherein it is held that a corporate guarantor is to have defaulted only upon failure to oblige the demand by creditor and not the date of default of principal borrower.
- e. With regards to question of inadequacy of stamp duty payable on the Deed of Guarantee(s), the Financial Creditor relies on decision of corresponding benches at NCLT, Mumbai in ***Satra Properties (India) Ltd. vs. Vistra ITCL India Ltd. & Ors., (M.A. No. 180/2020 in C.P. No. 1632 of 2019)*** dated 10.02.2022 and in the ***Bank of India Limited vs. BD & P Hotels (India) Private Limited, C.P. (IB) No. 226/MB-IV/2022*** dated 23.06.2023, wherein it was held that the payment of stamp duty is not a relevant criteria for consideration of Section 7 petition.
- f. The Financial Creditor states that the concern of differential calculation of debt and default by the corporate debtor is dealt with by the Hon'ble National Company Law Appellate Tribunal in ***Suzlon Synthetics Ltd. vs. Stressed Asset Stabilisation Fund and Anr., Company Appeal (AT)(Ins.) No. 662-663 of 2022*** that there is no requirement to calculate the exact amount of debt and default during the adjudication of Section 7 petition instead it is

only to be seen whether the amount in default is more than the threshold amount prescribed in Section 4(1) of the Code.

27. It is stated that the issue regarding debt and default having been committed by the principal borrower is dealt with in the order dated 03.01.2024 in C.P. (IB) 692/MB/C-IV/2023. The latter company petition is filed by the Financial Creditor against the corporate guarantor of Principal Borrower, that is, M/s Superfine Profile and Extrusions Private Limited (**'SPEPL'**). The said order dated 03.01.2024 in Company Appeal (AT) (Ins) No. 78 of 2024 has been upheld by the Hon'ble NCLAT in its order dated 14.08.2024 therefore, establishing the debt and default of SPEPL as the corporate guarantor of the principal borrower.
28. Further, with respect to the plea of 'novation' raised by the corporate debtor, it is emphasised that such is a plea of fact and the same must be pleaded and proved. It is stated that the argument for novation is argued orally across the bar without any pleading and proof in respect of the same.
29. The said Deed of Guarantee(s) cannot be assumed that an otherwise valid, subsisting and binding contract is substituted by the deed of guarantee dated 06.11.2020 unless there is an express intention of the parties to treat the old guarantees as extinguished. The Corporate Debtor has not pointed out any facts which may even remotely point out the intention of the parties for novation of Deed of Guarantee(s) thus, extinguishing it.
30. The Financial Creditor argues that the Corporate Debtor's claim that the old guarantees were extinguished is an afterthought, as the Corporate Debtor failed to raise this objection during the invocation of the old guarantees or even in its Reply. Further, it is stated that the

deed of guarantee dated 06.11.2020 was executed solely to include Bank of Maharashtra as a consortium member. Since Bank of Maharashtra did not disburse any funds to the Corporate Debtor, the invocation of this guarantee was unnecessary. Consequently, the Corporate Debtor's argument that the guarantees dated 22.08.2015 and 18.11.2016 were extinguished is unfounded. These guarantees remain valid and enforceable, and their invocation by the Financial Creditor was justified.

31. Further, the Financial Creditor submits that the financial solvency of the corporate guarantor is not a sufficient ground for non-initiation of CIRP proceedings. It is stated that due to non-payment of said loan the Financial Creditor has filed the present Petition on 23.07.2023. The Financial Creditor relies on the decision of Hon'ble Supreme Court in ***M. Suresh Kumar Reddy vs. Canara Bank and Ors., (2023) 8 SCC 387***, wherein it was held that the ruling in the case of ***Vidarbha Industries Power Ltd. (supra)*** is applicable only on facts of the case. However, once there is a debt and default, admission of the company petition must follow.

32. Though, the said default occurred on 28.09.2018 but the corporate debtor acknowledged the said debt within three years of occurrence of default, that is, 02.08.2021. The financial creditor is entitled to benefit from a fresh period of limitation commencing after exclusion of the period specified under Section 10-A of the Code. However, the guarantee was invoked by said guarantee invocation notice dated 06.03.2023. Thus, the financial creditor has filed the present petition on 23.11.2023 which is within limitation period.

Analysis and Findings

33. We have considered submissions of learned counsel for both the parties and perused documents on record.
34. Concerning the admission of the present petition under Section 7 of the Code filed by the Petitioner/Financial Creditor for initiating CIRP, the Corporate Guarantor/ Respondent has challenged the maintainability of the said petition by raising the contention that financial creditor cannot individually proceed against the corporate guarantor.
35. Learned Counsel for the Financial Creditor argued that the Petitioner is entitled to proceed individually under Section 7 of the Code without obtaining the consent of the other banks.
36. We note that the objections/ defence as raised by the corporate debtor in para 24 above are as follows:
- I. Petition barred under Section 10-A of the Code
 - II. Failure to produce the Deed of Guarantee(s) which was executed to secure the said Facility
 - III. Invocation of novated Deed of Guarantee(s)
 - IV. Insufficiently Stamped Deed of Guarantee(s)
 - V. Inconsistencies in the present Company Petition
 - VI. Solvency of Corporate Guarantor
37. In the present case, the financial creditor is the lead bank to consortium of banks who extended credit facilities to the principal borrower and thus according to the terms of said Working Capital Consortium Agreement the financial creditor is responsible for initiating legal proceedings against Principal Borrower and/or Corporate Guarantor

38. The Corporate Guarantor contends the present petition to be barred under Section 10-A of the Code. Section 10-A of the Code reads as under:

“10A. Suspension of initiation of corporate insolvency resolution process.

Notwithstanding anything contained in sections 7,9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

39. The Financial Creditor has invoked the Deed of Guarantee(s) of the Corporate Guarantor by said guarantee invocation notice dated 06.03.2023. The default committed by the principal borrower dated 29.11.2020 though occurred during the period specified under Section 10-A of the Code (being the period between 25.03.2020-24.03.2021) cannot be considered as date of default by the Corporate Guarantor. We lay reliance on the decision given by the Hon'ble National Company Law Appellate Tribunal, Delhi in ***Mudhit Madanlal Gupta versus Supreme Constructions and Developers Pvt. Ltd., 2023 SCC OnLine NCLAT 378*** decided on 26.07.2023, wherein it was held as under:

“7. When the Financial Creditor has invoked the corporate guarantee of the corporate guarantor by the notice dated 16.10.2020 and asked the corporate guarantor to make the

*payment within seven days from the receipt of the notice, the default has occurred during the 10A period and the default dated 02.07.2019 which is default alleged against the Principal Borrower can not be put to a default for corporate guarantor. **Liability of corporate guarantor although is coextensive of the Principal Borrower but when the Guarantee requires invocation of the guarantee deed, default on the guarantor shall be the date when the corporate guarantee has been invoked.***”

(emphasis provided)

Accordingly, the Date of Default will be 16.03.2023 and therefore, the petition is not hit by Section 10-A of the Code.

40. With respect to the contention raised by the Corporate Guarantor regarding admissibility of the present petition based on deed of guarantee(s), we note that the corporate guarantee was issued not only in favour of the consortium but also in favour of each of the members of the consortium including the Financial Creditor, Central Bank of India. This is clear from an extract of the said Deed of Guarantee (s) in Annexure – “H-Colly” at page number 62 of the petition, which is reproduced as under:

“xxx

*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***

xxx”

Accordingly, the Financial Creditor in the case here in is very much within it is right to individually file and pursue this petition.

41. In regard to the validity of said deed of guarantee(s) upon execution of subsequent deed of guarantee and also whether the present petition is

supported by a validly executed deed of guarantee(s) which secures the said Facility, we note the submission made by the Financial Creditor that the plea of novation was also taken by SPEPL before the Hon'ble National Company Law Appellate Tribunal in respect of the identically worded guarantees dated 22.08.2015 and 18.11.2016 issued by SPEPL in favour of the Financial Creditor. However, this argument was rejected by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in appeal, in the case of **Siddharth Satish Katariya (Ex Director) of Superfine Profiles & Extrusions Pvt. Ltd. vs. Central Bank of India & Anr. (Company Appeal (AT) (Insolvency) No. 78 of 2024), dated 14.08.2024**, observing as under

*“22. When the Corporate Debtor was bound by the earlier bank ... guarantees dated 22.08.2015 and 18.11.2016 which guarantees are still continuing, we cannot accept the submission of the Appellant that by virtue of guarantee dated 06.11.2020 which was for Term Loan of Rs.114.22 Crores, earlier guarantee has wiped off and are not in existence. Guarantee dated 06.11.2020 in no manner take away the earlier securities including the guarantee which was executed by corporate guarantor in favour of the Financial Creditor. The Consortium Agreement which was executed on 06.11.2020 between the parties clearly mentions that it was not to affect existing securities. **We, thus, do not find any novation of contract between the parties. Disbursement made pursuant to sanction made in the year 2013 and the guarantees issued by the corporate guarantor on 22.08.2015 and 18.11.2016 are still continuing and binds the corporate guarantor to discharge the debt. Subsequent to disbursement, Adhoc Limit and FITL sanctioned on 26.12.2019 and 09.09.2020 are also covered by the existing securities as noticed above. We, thus, are of the view that the invocation of guarantee on 06.03.2023 by the Bank was right invocation which obliges the corporate guarantor to clear the dues.***

*23. It is relevant to notice that **there is no submission of the Appellant that no amount is due. Debt and default is not even contested.** Appellant sought to get over his liabilities on the ground that contract is novated and there is no liability of the*

corporate guarantor as of now, which argument we have already noted and rejected as above.”

(bold for emphasis)

42. It is noted that Superfine Profiles & Extrusions Pvt. Ltd.(SPEPL) is also a Guarantor in respect of the same loans/facilities availed by the Principal Borrower against which petition filed u/s 7 of the code and order admitting it under CIRP by NCLT was upheld by the Hon'ble NCLAT and issue dealt is identical as raised by the Respondent in the case under consideration. We also concur with the Financial Creditor's counsel's assertion that the judgments cited by the Corporate Debtor in support of its 'novation' plea do not establish any such principle. Novation must be explicitly proven before concluding that the prior contract is no longer enforceable. The judgments cited by the Corporate Debtor involved specific factual scenarios where the courts determined that novation had occurred. The Corporate Debtor's attempt to extract isolated sentences from these judgments and apply them out of context is legally impermissible, as affirmed by the Hon'ble Supreme Court in the case of ***CIT vs. Sun Engineering Works (P) Ltd. [1992] 198 ITR 297 (SC)***.

43. The facts of the judgements relied upon by the Corporate Debtor in ***Satish Chandra Jain vs. National Small Industries Corporation Ltd. & Ors., AIR 2003 SC 623*** are distinguishable as in that case the appellant had guaranteed a loan for their son's proprietorship. Subsequently, the business was transferred to a private limited company with the lender's consent. The appellant executed a new guarantee for the company, and the lender obtained recovery certificates against the company but not the appellant. The Hon'ble Supreme Court found that the new agreement superseded the old one, effectively novating the contract. This decision was based on the specific facts of the case, particularly the absence of any reference to the old agreement in the lender's pleadings and the non-impleadment of the

appellant in the suit. Further in the present case, the deed of guarantee dated 06.11.2020 was executed solely to include Bank of Maharashtra as a consortium member. Since, Bank of Maharashtra did not disburse any funds to the Corporate Debtor, the invocation of this guarantee was unnecessary. Consequently, the Corporate Debtor's argument that the said deed of guarantee(s) dated 22.08.2015 and 18.11.2016 were extinguished is unfounded.

44. Similarly, the facts of ***Rajan Malhotra & Anr. vs. Union Bank of India & Ors., 2019 SCCOnLine Del 11177*** are also distinguishable. In paragraph 27 of this judgment, the court explicitly found that a novation had occurred. This finding was based on the fact that the original loan contract had ended due to a change in the company's directors and the subsequent execution of new loan documents. In the present case, there has been no change in the directors of the company. The old loans remain in effect, and the issued guarantees continue to cover all credit facilities. Therefore, the *Rajan Malhotra* decision (*supra*) is not applicable to the current situation.
45. From the above, more specifically in view of the judgement of Hon'ble NCLAT in the case of another Guarantor of the Principal Borrower, i.e. SPEPL where in the identical issue has been decided that the said Deed of Guarantee(s) is a continuing one and the question of 'novation' does not arise in the present case, we are in agreement with the submission of the Financial Creditor and accordingly reject of the contention of the Respondent herein. It is also apparent that there was no substitution towards the terms of the said Deed of Guarantee(s) even after the execution of deed of guarantee dated 06.11.2020, keeping the right under the old contract alive and hence, no novation into the guarantee.
46. In regards challenging the validity of the said Deed of Guarantee(s) by the Corporate Guarantor on ground of insufficiency of stamp duty, we

rely on the decision of the Hon'ble Supreme Court in ***N.N. Global Mercantile vs Indo Unique Flame & Ors. (Civil Appeal No(s). 3802-3803 of 2020)*** decided on 25.04.2023, which states as hereunder:

*“Section 35 of the Stamp Act is unambiguous. It stipulates, “No instrument chargeable with duty shall be admitted in evidence...” The term “admitted in evidence” refers to the admissibility of the instrument. Sub-section (2) of Section 42, too, states that an instrument in respect of which stamp-duty is paid and which is endorsed as such will be “admissible in evidence”. **The effect of not paying duty or paying an inadequate amount renders an instrument inadmissible and not void.** Non-stamping or improper stamping does not result in the instrument becoming invalid. The Stamp Act does not render such an instrument void. **The non-payment of stamp duty is accurately characterised as a curable defect.** The Stamp Act itself provides for the manner in which the defect may be cured and sets out a detailed procedure for it. It bears mentioning that there is no procedure by which a void agreement can be “cured”.*

(emphasis provided)

47. We note that the said Deed of Guarantee(s) obligate the borrower to repay the debt upon invocation. These Deeds were executed on Rs. 100 non-judicial stamp paper, despite the Corporate Guarantor's claim that they should have been executed under the Maharashtra Stamp Act, 1958. However, neither the borrower nor the guarantor objected to the stamp duty on these documents at the time of execution. As the insolvency proceedings under the Code are intended to resolve the insolvency of the corporate guarantor, technical deficiencies like insufficient stamp duty can be rectified. Therefore, we find no merit in the argument that the said Deed of Guarantee(s) should not be considered for the purposes of Section 7 of the Companies Act.

48. With respect to corporate debtor's submission on the inconsistency of the present company petition, we observe that it is immaterial to deal with this issue as the corporate guarantor's liability against the

financial creditor is more than that stipulated under Section 4(1) of the code therefore, the present petition does not suffer from deficiency and lacuna post filing the relevant details and documents. Accordingly, the plea in regards the present company petition is invalidated.

49. The counsel for the Corporate Debtor has also taken the plea of commercial solvency of the Corporate Debtor which, in our view, is not of relevant consideration. An application filed u/s 7 of the Code can be admitted once there is a debt which is due and payable and as far as the present case is concerned, there is a debt and there is a default in repayment thereof. Hence as the default is committed by the principal borrower, the liability of the Corporate Debtor, being the guarantor, instantly triggers the right of the financial creditor to proceed against the Corporate Guarantor (being a corporate debtor).

50. With regards to the corporate debtor's contention of its financial viability etc. and its reliance on **Vidarbha Industries Power Limited (supra)** it is stated that corporate debtor has against the said loan paid only 20% of the loan taken and remaining amount is outstanding. There is no dispute as regards this fact. If the Corporate debtor is solvent and is in capacity to pay, it could have done so, which is not the case. It is noted here that the debt is old and was fully payable in 2017 itself.

51. It is sufficient to state that the corporate guarantor failed to repay said outstanding dues to the financial creditor within ten days of invocation of bank guarantee dated 06.03.2023 therefore, the date of default being 16.03.2023. Accordingly, we observe that the present Petition filed on 23.07.2023 is well within the period of limitation.

52. Further, it is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under Section 7 of the Code must be admitted unless it lacks other necessities as mandated

thereunder. We are supported by the decision of Hon'ble Supreme Court in ***Innovative Industries Limited vs. ICICI Bank and Anr, (2018) 1 SCC 407***, wherein it was held as follows:

“28. ... The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days' receipt of a notice from the adjudicating authority.

*30.On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, **the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred.** It is of no matter that the **debt is disputed so long as the debt is “due”** i.e. Payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”*

(emphasis provided)

53. From perusal of the record and the documents relied upon by the Petitioner, it is hereby proved that there has been a financial debt in respect of which default is committed by the Corporate Debtor and further the petition under Section 7 of the IBC is filed within the period of limitation period and the default amount is in excess of Rs. 1 Crore and is above the threshold limit mandated under Section 4(1) of the Code. Accordingly, we are satisfied that the present Petition is maintainable.

54. Given the facts and circumstances of the case and discussions hereinabove, the **Company Petition (IB)/691(MB)/2023** is admitted and ordered as follows:

ORDER

- i. The petition bearing CP (IB) – 691 (MB)/2023 filed by the Central Bank of India, the Financial Creditor, under section 7 of the IBC read with Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against Superfine Extrusions Private Limited, the Corporate Debtor, is admitted.
- ii. This bench hereby appoints **Mr. Jitendra Palande, Registration No. IBBI/IPA-003/IP-N00028/2017-18/10188** as the proposed Interim Resolution Professional (IRP) having e-mail jitendra@7crllp.com to carry out the functions as mentioned under the Insolvency and Bankruptcy Code, 2016. The proposed IRP has filed his Written Communication dated 23.11.2023 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Upon checking IBBI web portal, it is found that AFA is valid up to 31.12.2025.
- iii. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

- iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor
- iv. Notwithstanding the above, during the period of moratorium:
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- v. The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an order for Liquidation of Corporate Debtor under section 33, as the case may be.
- vi. The public announcement of the Corporate Insolvency Resolution process shall be made immediately as specified under section 13 of the Code.

- vii. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of Section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- viii. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- ix. The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.
- x. The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
- xi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- xii. Accordingly, this Petition is Admitted.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Akshita, L.R.A.

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)