NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

(APPELLATE JURISDICTION)

27.11.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)

JATINDRANATH SWAIN, MEMBER (TECHNICAL)

Company Appeal (AT) (CH) (Ins) No.262/2026
(IA Nos.737, 738 & 740/2026)

In the matter of

Mr. Debashis Bose
S/o Birendranath Bose
Flat IA, Naba Santiniketan,
Plot. No. A1-9/4, Action Area IA,
New Town, North 24 Parganas,
West Bengal- 700 156. **...Appellant**

Vs

State Bank of India
State Bank Bhavan, Madam Cama Road,
Mumbai – 400021, and
acting through its
Branch at Stressed Assets Management Branch,
Hyderabad (Branch Code: 18359),
D. No. 3-4-1013/A, 1st Floor, CAC,
TSRTC Bus Station, Kachiguda,
Hyderabad – 500 027
Represented by its
Authorised Representative
T. Veerabhadra Rao

Ms. Medarametla Srinivasa Manoranjani
Insolvency Professional;
having Registration No.
IBBI/IPA-001/IP-P00736/2017-2018/11235,
residing at Flat 122,
Vasavi Indraprastha, Street 1, Czech Colony,
Sanathnagar, West Marredpally,
Hyderabad – 500 018. **...Respondents**

(Arising out of Order dated 15.05.2026 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench) in C.P. (IB) No. 205/7/HDB/2021)

Present :

For Appellant : Mr. Vijay Narayan, Advocate General
For Ms. Deepika Murali, Mr. Ankur Chawla,
Mr. Kunal Vajani, Mr. Kanu Agarwal,
Mr. Guneet Sidhu, Ms. Nivea, Advocates

For Respondents : Mr. Tushar Mehta, Solicitor General of India
Mr. PH Arvindh Pandian, Senior Advocate
For Ms. Surabhi Khattar, Mr. Shivansh Vishwakarma, Ms. Pallavi Agarwal & Mr. SP. Surya, Advocates for R1
Ms. MS Mano Ranjani, RP for R2

WITH

Company Appeal (AT) (CH) (Ins) No.263/2026
(IA Nos.1145, 742, 743 & 744/2026)

In the matter of

Ms. Pragya Jhunjhunwala
D/o Mayapati Khemka
Suspended Director of
India Power Corporation Limited
VIP Towers, 83 Golaghata Road,
Kolkata – 700 048. **...Appellant**

Vs

State Bank of India
State Bank Bhavan, Madam Cama Road,
Mumbai – 400021, and
acting through its
Branch at Stressed Assets Management Branch,
Hyderabad (Branch Code: 18359),
D. No. 3-4-1013/A, 1st Floor, CAC,
TSRTC Bus Station, Kachiguda,
Hyderabad – 500 027
Represented by its
Authorised Representative
T. Veerabhadra Rao

Ms. Medarametla Srinivasa Manoranjani
Insolvency Professional;
having Registration No.
IBBI/IPA-001/IP-P00736/2017-2018/11235,
residing at Flat 122,
Vasavi Indraprastha, Street 1, Czech Colony,
Sanathnagar, West Marredpally,
Hyderabad – 500 018. **...Respondents**

(Arising out of Order dated 15.05.2026 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench) in C.P. (IB) No. 205/7/HDB/2021)

Present :

For Appellant **:** Mr. Krishnendu Datta, Senior Advocate
For Mr. Yash Tandon, Mr. Arun C Mohan,
Ms. Swabhhi Tyagi & Mr. Anirban Bhattacharya, Advocates

For Respondents **:** Mr. Tushar Mehta, Solicitor General of India
Mr. PH Arvindh Pandian, Senior Advocate
For Ms. Surabhi Khattar, Mr. Shivansh Vishwakarma, Ms. Pallavi Agarwal & Mr. SP. Surya, Advocates for R1
Ms. MS Mano Ranjani, RP for R2

JUDGMENT
(Hybrid Mode)

Per: Justice N. Seshasayee, Member (Judicial)

These instant Company appeals have been filed by Mr. Debashis Bose and Ms. Pragya Jhunjhunwala, both of who are the suspended directors of the corporate debtor, M/s. India Power Corporation Limited (hereinafter would be referred to as IPCL). IPCL has provided corporate guarantee for the financial facilities availed by M/s. Meenakshi Energy Ltd., the principal borrower herein MEL), and it challenges the Order of the Adjudicating Authority (NCLT), Hyderabad, dated 15.05.2026 in

CP/IB/205/2021, admitting IPCL to CIRP under Sec.7 IBC in a petition which the first respondent SBI had instituted.

1.2 This is the second innings this case is undergoing. Earlier, when the matter was before the Adjudicating Authority, and the pleadings were required to be completed, SBI had filed its rejoinder belatedly, and it filed I.A.1547 of 2022 to take its rejoinder on record. The Adjudicating Authority allowed it partially and had held that while it would take the rejoinder on record, it still would not consider it. This was challenged both by SBI and IPCL before this tribunal in Company Appeal (Ins) 87 of 2023 and (Ins) 69 of 2023 and vide its Order dated 04.10.2023 both were dismissed. SBI chose to challenge the judgement in Civil Appeal No. 8178 of 2023 before the Hon'ble Supreme Court. In the meantime, the Adjudicating Authority dismissed the very company petition filed under Sec.7 IBC, vide its Order dated 30.10.2023, on the ground that the debt claimed is not payable since the deed of corporate guarantee is void under Sec.23 of the Contract Act,1872. This order was challenged by the SBI in Company Appeal (Ins) 53 of 2024. While it was pending, the C.A.8178 of 2023 came up before the Hon'ble Supreme Court, and vide its judgment dated 14.02.2025 it was disposed of the same as below:

> *"13. As we have set aside the order passed by the NCLAT, the matter should now go back to the NCLT for fresh consideration of Section 7 application.*
>
> *14. In this regard, the NCLAT shall pass appropriate order in the pending appeal filed by the State Bank of India keeping in mind our observations in this order.*
>
> *15. However, we clarify that we have otherwise not expressed any opinion on the merits of the case.*

16. The Section 7 application of the bank shall now be decided by the NCLT afresh strictly in accordance with law on its own merits."

In view of the same, this tribunal vide its Order dated 24.02.2025, closed the Company Appeal (Ins) 53 of 2024 filed against the Order dismissing the petition under Sec.7 IBC. Thereafter, the Adjudicating Authority heard the matter *de novo*, and this time, it chose to allow the petition and initiated CIRP against the corporate debtor. It is this Order which is now in challenge before us.

1.3 The quintessential point raised by IPCL is as to the validity of the deed of corporate guarantee. While it carried conviction with the Adjudicating Authority in the first instance, post remand, it took the opposite view.

2. A brief narration of material facts that provide the context for this appeal is provided as below:

a) IPCL is an electricity distribution licensee in the State of West Bengal since 1920s and is engaged in its business for over a century. It is now governed by the Electricity Act, 2003, and the Regulations framed by the West Bengal Electricity Regulatory Commission (Licensing and conditions of License) Regulations, 2013 (hereinafter referred to as WBERC).

b) Be that as it may, a certain Meenakshi Energy Private Limited (MEL), came to be promoted by M/s Engie Global Developments B.V (Engie) a Dutch subsidiary of a French company, and incorporated for engaging in the business of thermal electricity generation. It was proposed to be done in two phases.

c) For financing Phase I, comprising 270MW power project, on 10.07.2009, MEL executed a Common Loan Agreement with a consortium of lenders (hereinafter referred as Phase I CLA) with the consortium led by State Bank of India (SBI). Subsequently, on 01.10.2010, MEL executed a Common Loan Agreement for financing Phase II, comprising a 700 MW thermal power project (henceforth would be referred to as Phase II CLA) with the consortium led by Rural Electrification Corporation Limited (REC). Both these loan agreements underwent certain amendments which are not very germane to this appeal.

d) While things stood thus, IPCL opted to takeover MEL, and on 25.02.2016, IPCL and Engie entered into a share purchase agreement for the transfer of Engie's 95.07% shareholding in MEL to IPCL, while simultaneously agreeing to infuse approximately USD 300 million into MEL.

e) It appears on 18.05.2016, SBI, the lead bank of the consortium gave its approval to the proposed transfer of shares of MEL to IPCL, but added a rider that IPCL must offer corporate guarantee to the outstanding loans of MEL. (This correspondence is not on record, but it is referred to in some other correspondence placed before us. It, however, is not very material for the disposal of this appeal.)

f) On 29.07.2016, IPCL addressed a letter to REC recording the in-principal approval for the share transfer by SBI vide letter dated 18.05.2016, and its agreement to pledge 100% of its shareholding in MEL, but raised its objections/concerns vis-à-vis a condition stipulated by the lenders requiring IPCL to provide corporate

guarantee. IPCL's principal ground of objection has been that in terms of Regulation 5.13.2 of the West Bengal Electricity Regulation Commission (Licensing & Distribution) Regulations (hence forth WBERC Regulations or just Regulations) no corporate guarantee could be given.

g) Thereafter, between 08.09.2016 and 13.09.2016 and also on 19.09.2016 legal opinions were obtained by the lenders on the applicability of Regulation 5.13.2 of the WBERC Regulations which in essence is to the effect that there would be no bar for IPCL to provide corporate guarantee with its non-regulated assets.

h) Based on these legal opinions, on 14.09.2016, IPCL addressed a letter to REC in which it stated that no specific WBERC approval was required for providing a corporate guarantee in respect of its non-regulated assets and the surplus funds generated from the regulated asset. On 22.09.2016, REC confirmed it.

i) Against this backdrop, on 23.09.2016, IPCL executed two documents in favour of SBICAP Trustee Company Limited for the benefit of the lenders: (i) an Unattested Share Pledge Agreement pledging 100% of its shareholding in MEL and (ii) a deed of Corporate Guarantee restricting recourse to its Non-Regulated Assets and Surplus Amounts under Clauses 2.1, 2.2 and 2.7 of the said deed. Also, on the same day, IPCL executed deed of undertaking and indemnity in favour of REC. It is to be underscored here that this Corporate Guarantee was executed without obtaining the permission of WBERC. Besides, Mr. Asok Kumar Goswami, a Director of IPCL, had also executed an affidavit dated 23.09.2016, stating that IPCL was not required to

obtain the prior consent of WBERC for issuing the Corporate Guarantee in accordance with its terms.

j) Subsequently, on 17.08.2017, IPCL filed an application before WBERC in Case No. OA-260/17-18, seeking, inter alia, approval for issuing Corporate Guarantees in favour of lenders for businesses acquired or proposed to be acquired. This is the first of the three applications made to the WBERC. On 09.11.2017, WBERC rejected this application to WBERC, holding that the enforcement of the Corporate Guarantee could adversely affect the interests of the consumers within its licensed area and, therefore, disallowed IPCL from issuing Corporate Guarantees to funding agencies or any other agencies. What however, is significant is that IPCL had not disclosed about the execution of the deed of guarantee which it had earlier executed.

k) On 22.11.2017, IPCL addressed letters to REC and SBI informing them of the First WBERC Order, dated 09.11.2017, and asserting that the Corporate Guarantee was non-est, unenforceable and incapable of being given effect to. But REC stood its ground, and on 01.12.2017, REC, in response to IPCL's letter dated 22.11.2017, asserted that WBERC's consent was not required since the Corporate Guarantee was restricted to IPCL's Non-Regulated Assets and Surplus Amounts, and maintained that the Corporate Guarantee remained valid, subsisting and enforceable. But vide its correspondence dated 13.12.2017, IPCL maintained that it had executed the Corporate Guarantee relying on REC's assurances and legal opinions obtained by the lenders and that the Guarantee had been structured in accordance with the legal advice shared by the lenders. REC was

unflinching in its reaction when it vide its response dated 11.01.2018, REC insisted that the First WBERC Order had not invalidated the Corporate Guarantee and alleged that IPCL had induced the lenders to extend financial assistance by representing that the guarantees were valid and enforceable.

l) IPCL and MEL would now institute Commercial O.S. 266 of 2017 before the Commercial Court, Hyderabad, seeking a declaration that the deed of guarantee that it had executed on 23.09.2016 is illegal, arbitrary and void.

m) In the meantime, on 28.10.2017, MEL's loan account was classified as NPA due to its default in repaying the debt. On 20.12.2017, SBICAP Trustee Company Limited issued the First Demand Certificate, demanding approximately ₹93.57 Crores from IPCL and invoking the pledge over 100% of IPCL's shareholding in MEL. On 02.05.2018, the pledged shares were transferred to SBICAP Trustee Company Limited as the beneficial owner.

n) In these circumstances, on 15.05.2018, IPCL filed its second application before WBERC in Case No. OA-274/18-19, seeking approval for issuing Corporate Guarantees to lenders specifically in relation to MEL (Second WBERC Application). And as in the first instance, for yet another time IPCL did not choose to disclose the execution of deed of guarantee. On 07.08.2018, WBERC rejected IPCL's Second WBERC Application yet again, holding that its financial position did not permit it to extend a Corporate Guarantee for MEL's project outside its licensed area, and it would create a charge over assets dedicated to supplying electricity to consumers in West Bengal.

o) While things stood thus, on 02.04.2019, IPCL withdrew the Commercial O.S. 266 of 2017 (referred above), but without liberty to file a fresh suit.

p) On 03.07.2019, SBI initiated recovery proceedings against MEL and IPCL before the Debt Recovery Tribunal, Hyderabad, in OA No. 444/2020. And on 07.11.2019, vide an Order of the Adjudicating Authority in CP (IB)/184/7/HDB/2019, CIRP was initiated against MEL.

q) Undeterred by two successive rejections of its applications for permission by the WBERC under Regulation 5.13.2, on 26.10.2021, IPCL filed its third application No. OA-382/21-22, under Regulation **5.15.1** before the Regulatory Commission Case seeking a determination as to whether prior approval under Regulation 5.13.2 of the WBERC Regulations was mandatory before issuance of the Corporate Guarantee (Third WBERC Application). On 22.12.2021, WBERC passed an order determining that its prior consent under Regulation 5.13.2 of the WBERC Regulations was mandatory before execution of the Corporate Guarantee and issued a show-cause notice to IPCL as to why action under Section 142 of the Electricity Act, 2003, should not be initiated against it (Third WBERC Order).

r) On 07.02.2020, SBICAP Trustee Company Limited issued the Second Demand Certificate, demanding approximately ₹.967.21 Crores from IPCL, purportedly outstanding as on 31.01.2020. On 26.02.2020, SBI filed an application under Section 7 of the IBC against IPCL before the Adjudicating Authority. It appears that recovery proceedings that it had initiated against IPCL before the DRT was not placed before the

Adjudicating Authority. IPCL filed its Counter/objection and its fundamental defence was that the deed of corporate guarantee was executed not of its own volition but on the legal opinion which the lenders have provided and inasmuch as the said guarantee-deed contravenes Regulation 5.13.2 of the WBERC Regulations, it is not enforceable. SBI had filed its Rejoinder dated 13.06.2022, and what had happened thereafter have been captured in paragraph 1.2 above.

s) After re-hearing the matter a second time, on 15.05.2026, the Adjudicating Authority admitted SBI's Section 7 application against IPCL, commencing CIRP against it.

t) The next fact to be stated is that on 03.01.2022, IPCL instituted a Money Suit No.1 of 2022 before the Commercial Court, Alipore where in it sought an interim injunction against the lenders from exercising the rights of recovery of debts from it. While an *ex parte* order of injunction was initially granted by the trial court, it came to be vacated later. And, on 16.05.2023 this was confirmed by the Calcutta High Court in F.M.A. No. 1370 of 2022. This money suit is pending.

u) The last of the relevant fact is that on 10.08.2023, the Adjudicating Authority had approved the Resolution Plan submitted for MEL in IA 156 of 2023 in C.P.(IB)184 of 2019.

3. The line of reasoning of the Adjudicating Authority in admitting IPCL to CIRP is that:

a) The Corporate Guarantee was consciously executed by IPCL as part of the commercial arrangement and the same cannot be

subsequently avoided because the transaction resulted in financial liability.

b) the absence of prior approval under Regulation 5.13.2 of the WBERC Regulations by itself will not render the Corporate Guarantee void or unenforceable under Section 23 of the Indian Contract Act, 1872 since neither the provisions of the Electricity Act nor the WBERC Regulation has expressly or impliedly render the deed guarantee as void merely because it was executed without the prior approval of WBERC. Also, such non regulatory compliances do not render the whole contract void.

c) IPCL had earlier challenged the validity of the Corporate Guarantee in Commercial O.S No. 266 of 2017, which was withdrawn without liberty to institute fresh proceedings. Further, its conduct and admissions in earlier proceedings acknowledged the subsistence of the debt, validity of the Guarantee and its liability as Corporate Guarantor, and therefore the IPCL is estopped.

d) The invocation and transfer of pledged shares did not, by themselves, extinguish the underlying debt by placing reliance on PTC ***India Financial Services Ltd. vs Venkateswarlu Kari and another*** [(2022) 9 SCC 704]. The debt and default of MEL stood established. The Corporate guarantee had been duly invoked, demand notices had been issued and IPCL had failed to discharge its liability and the existence of financial debt and default stood established.

e) Turning to limitation, by reckoning the period of limitation from the date of the failure to comply with the demand notice dated

20.12.2017 by IPCL, the petition filed by the SBI under Sec.7 IBC on 26.02.2020 was within the prescribed period of limitation. The requirements of existence of financial debt, occurrence of default and completeness of the application under Section 7 of the IBC were therefore satisfied.

Arguments

4. The learned counsel for the appellants argued that:

a) the deed of Corporate Guarantee dated 23.09.2016 which IPCL in favour of the lenders of MEL is void and unenforceable for want of prior written consent of the WBERC, as mandatorily required under Regulation 5.13.2 of the WBERC (Licensing and Conditions of License) Regulations, 2013 under Sec. 23 of the Indian Contract Act, 1872, since its object or consideration is forbidden by law or would defeat the provisions of law. Consequently, no enforceable debt could arise against IPCL within the meaning of Sec. 3(11) and 3(12) of the IBC, and thus the essential requirement for admission of an application under Sec. 7 would remain unsatisfied. Reliance was placed on ***Innoventive Industries Ltd. Vs ICICI Bank*** [(2018) 1 SCC 407]; ***M. Suresh Kumar Reddy Vs Canara Bank***, [(2023) 8 SCC 387]; and ***Power Trust Vs Hiranmaye Energy Ltd.***, [(2026) 5 SCC 38]. This apart admission of MEL into CIRP could establish only MEL's liability and could not, by itself, establish the validity or enforceability of IPCL's Corporate Guarantee.

b) WBERC had, through its orders and subsequent proceedings, affirmed the requirement of prior consent for execution of the Corporate

Guarantee. The lenders did not challenge the said determination before the appropriate appellate forum under the Electricity Act, 2003. Therefore, the determination had attained finality and could not be collaterally questioned before the Adjudicating Authority under Sec. 60(5) of the IBC. Reliance was placed on ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka***, [(2020) 13 SCC 308]; ***Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta***, [(2021) 7 SCC 209]; ***Tata Consultancy Services Ltd. vs. Vishal Ghisulal Jain***, [(2022) 2 SCC 583]; ***State Bank of India vs. Union of India***, [2026 SCC OnLine SC 202]

c) the Electricity Act, 2003, together with the regulations framed thereunder, constitutes a special statutory framework governing electricity distribution licensee. The regulatory safeguards and prior-consent requirements applicable to IPCL cannot be disregarded merely by invoking the overriding provision under Section 238 of the IBC. Indeed, there is no irreconcilable conflict between the two enactments warranting the application of the overriding clause and that both statutes ought to be harmoniously construed. While the Adjudicating Authority relied on the decisions in ***Paschimanchal Vidyut Vitran Nigam Ltd., vs. Raman Ispat (P) Ltd.***, [(2023) 10 SCC 60], and ***Duncans Industries Ltd., vs. A.J. Agrochem***, [(2019) 9 SCC 725], the same are distinguishable on facts and the context in which those decisions were rendered.

d) the affidavit furnished by IPCL's Director, the representations made during negotiations, or any alleged admission on the part of IPCL cannot validate an agreement which is otherwise prohibited by law.

The affidavit dated 23.09.2016, the Indemnity Deed and Clause 2.4 of the guarantee deed thereof, cannot cure the absence of mandatory statutory consent and make the Corporate Guarantee enforceable contrary to Sec. 23 of the Contract Act. Where a party aware of a statutory prohibition cannot seek the aid of the Court to enforce a contract made in its violation. Reliance was placed on ***Loop Telecom and Trading Ltd. vs. Union of India***, [(2022) 6 SCC 762].

e) the withdrawal of Commercial Suit No. 266 of 2017, without adjudication on merits, cannot operate as a bar against IPCL questioning the validity of the Guarantee.

f) The Appellants contended that the requirement of prior approval under Regulation 5.13.2, being mandatory and backed by statutory penalties, amounts to a prohibition. Reliance was placed on ***Asha John Divianathan Vs Vikram Malhotra***, [AIR 2021 SC 2932] and ***Mannalal Khetan Vs Kedar Nath Khetan***, [(1977) 2 SCC 424]. Any contract entered into in breach of such statutory prohibition is void or unenforceable, even in the absence of an express provision declaring it so. Consequently, the Corporate Guarantee executed without the requisite approval cannot be enforced in law.

g) Alternatively, and at any rate, without prejudice to their primary contention regarding the invalidity of the Corporate Guarantee, Clause 2.7 of the deed of Guarantee itself confines the contracted obligation of IPCL to its non-regulated assets. Indeed, the contract was drafted by the lenders or their legal team, and hence in terms of *doctrine of contra proferentem,* it binds the lenders. So far as the non-regulated assets are concerned, they were transferred by IPCL to its wholly

owned subsidiary IPCL Power Ltd vide BTA dated 2.6.2025 during the pendency of CIRP. Reliance was placed on ***State of Maharashtra vs. M.N. Kaul,*** [1967 SCC OnLine SC 372], ***Syndicate Bank vs. Channaveerappa Beleri,*** [(2006) 11 SCC 506].

h) Even assuming the Guarantee to be enforceable, its limited recourse cannot justify initiation of CIRP against the entirety of IPCL, including its regulated electricity distribution undertaking and assets. It was contended that the IBC does not provide for a CIRP confined to specified assets and that admission of the Section 7 application would consequently expose assets and revenues which were never intended to secure the lenders' facilities. The Resolution Professional however, had already assumed control over the licensed undertaking and that a sector-specific and modulated approach was necessary, having regard to the public utility character of IPCL's business. Reliance was placed on ***S. Elangovan vs. ASREC (India) Ltd***., [2022 SCC OnLine NCLAT 2859]; ***Mansi Brar Fernandes vs. Shubha Sharma***, [2025 INSC 1110]; and ***Gagan Tandon vs. IL&FS Financial Services Ltd.***, [2026 SCC OnLine NCLAT 16].

i) the IBC is a mechanism for insolvency resolution and not a substitute for ordinary recovery proceedings. Where the very validity and enforceability of the Corporate Guarantee are seriously disputed and require adjudication, the insolvency process cannot be invoked merely as a means of recovery. Reliance was placed on ***Dhanlaxmi Bank Ltd. vs. Mohammed Javed Sultan,*** [2026 SCC OnLine SC 820], ***Swiss Ribbons (P) Ltd. vs. Union of India***, [(2019) 4 SCC 17].

j) The earlier order dated 30.10.2023 had rejected SBI's Sec. 7 application after considering the material and legal issues arising in the proceedings. The matter was thereafter remanded by the Hon'ble Supreme Court in relation to the treatment of SBI's rejoinder. However, on remand, the Adjudicating Authority reversed its earlier findings on several independent questions of law, notwithstanding the absence of any material in the rejoinder warranting such reversal.

k) The fact regarding the indemnity, was filed by the respondent only in the rejoinder and not in Sec. 7 application. The effect of the same was not considered by the NCLT, therefore the issue of indemnity cannot be sustained at the appellate stage.

l) SBI had taken inconsistent positions regarding the date of default. While the application refers to 31.01.2020 as the date of default, the list of dates referred to 28.12.2017, and the rejoinder relied upon a demand notice dated 07.02.2020. However, the Adjudicating Authority treated the demand notice dated 20.12.2017 as the date of invocation of bank guarantee and accordingly determined the date of default, properly reconciling the inconsistent dates and the amounts claimed. Reliance was placed on ***Babulal Vardharji Gurjar Vs Veer Gurjar Aluminium Industries Pvt. Ltd.***, [(2020) 15 SCC 1]; ***Royal Construction Vs Gannon Dunkerley & Co. Ltd.***, [2025 SCC OnLine NCLAT 618], ***Syndicate Bank vs. Channaveerappa Beleri***, [(2006) 11 SCC 506]; and ***Pooja Ramesh Singh vs. State Bank of India***, [2023 SCC OnLine NCLAT 193].

m) At any rate, when the WBERC in its third Order dated 22.12.2021, had held that the deed of guarantee is unenforceable, the tribunal

constituted under the IBC may not sit in appeal over the same. In other words, according to the appellant, it falls within the exclusive jurisdiction of the WBERC to test the deed of guarantee on the touchstone of Regulation 5.13.2 which it is empowered and duty bound to administer, and when once it has exercised its exclusive jurisdiction, it is not given to this tribunal, which is constituted for a limited purpose of resolving the insolvency of companies, to evaluate the correctness of the decision of the WBERC.

5. Per contra, the learned counsel for the respondent would argue:

a) IPCL had voluntarily executed the Corporate Guarantee and had expressly represented that all requisite approvals had been obtained. It was contended that Regulation 5.13.2 of the WBERC Regulations does not expressly provide that a guarantee executed without prior consent would become void or unenforceable, and that the consequence of any breach would be regulatory action against the licensee. It was further submitted that WBERC had not declared the Guarantee void and that the Adjudicating Authority was competent to examine the contractual liability arising therefrom. Reliance was placed on ***Nanakram Vs Kundalrai***, [(1986) 3 SCC 83]; ***Nutan Kumar Vs IInd Additional District Judge***, [(2002) 8 SCC 31]; ***Bank of India Finance Ltd., Vs Custodian***, [(1997) 10 SCC 488] and ***Satyan Kasturi vs. SBI***, [2022 SCC OnLine NCLAT 4093]

b) the proceedings before WBERC did not result in any adjudication declaring the Corporate Guarantee invalid, but culminated only in a show-cause notice and that no final order imposing any consequence

upon IPCL had been passed. Therefore, the Adjudicating Authority was not precluded from examining the existence of financial debt and default under the IBC.

c) IPCL, notwithstanding its status as an electricity distribution licensee, is a corporate entity governed by the provisions of the IBC. In the event of any inconsistency between the IBC and the Electricity Act, Section 238 of the IBC would prevail. SBI relied upon ***Paschimanchal Vidyut Vitran Nigam Ltd., Vs Raman Ispat (P) Ltd.***, [(2023) 10 SCC 60]; ***Duncans Industries Ltd., Vs A.J. Agrochem***, [(2019) 9 SCC 725]; ***Power Trust vs. Bhuvan Madan*** [2026 SCC OnLine SC 248] and ***REC Vs Hiranmaye Energy Ltd.***, CP (IB) 138 of 2021, Order dated 02.01.2024

d) The Ministry of Power has clarified that CIRP can be initiated even against State-owned electricity distribution and generation companies. Indeed, the admission of ***Hiranmaye Energy Limited***, a WBERC-regulated power company, into CIRP was upheld by the Hon'ble Supreme Court.

e) IPCL had, through its director's affidavit dated 23.09.2016, and the representations made during the transaction, assured the lenders that no prior WBERC consent was required for the execution of the Corporate Guarantee. It was submitted that IPCL had derived substantial commercial benefits from the acquisition of MEL and could not subsequently avoid its contractual obligations by relying upon its own failure to obtain the requisite approval. SBI further relied upon the Clause 2.4 of the Guarantee Deed thereof to contend

that IPCL's indemnity obligations would survive even if the guarantee was held to be void, voidable or unenforceable.

f) the Corporate Guarantee, when read as a whole, is unconditional and is not restricted to the non-regulated assets. And, the transfer of non-regulated assets to IPCL's subsidiary is intended to defeat the rights of the lenders and has been effected without obtaining the requisite consent.

g) the alleged limitation on the assets available for recourse does not affect the existence of financial debt or the maintainability of the petition under Sec. 7. The regulated nature of IPCL's business does not confer immunity from the operation of the IBC and that the extent of liability or the assets ultimately available for recovery cannot be examined as a ground to defeat the admission of CIRP.

h) SBI submitted that the application under Sec. 7 was founded on the existence of financial debt and default and was not instituted merely as a recovery mechanism. It was further contended that invocation of the pledge over MEL's shares did not discharge IPCL's independent liability under the Corporate Guarantee. Reliance was placed on ***PTC India Financial Services Ltd., Vs Venkateswarlu Kari*** [(2022) 9 SCC 704].

i) So far as the judgement of the Hon'ble Supreme Court in C.A.8178 of 2023 is concerned, it had remanded the entire Sec. 7 application for fresh consideration on merits and had not restricted the Adjudicating Authority's reconsideration merely to the rejoinder. The Adjudicating Authority, is therefore well within its authority to reconsider all issues arising in the proceedings.

j) the omission or inconsistency in mentioning the precise date of default in Part IV of the application was not fatal, since the documents placed on record established the date on which the default occurred. It was submitted that IPCL failed to comply with the demand dated 20.12.2017 within the stipulated period of seven days and that the subsequent notice dated 07.02.2020 merely reiterated the earlier demand. Reliance was placed on ***Manmohan Singh Jain Vs State Bank of India*** [(2021) SCC OnLine NCLAT 5983] and ***Ravi Auto Ltd. Vs Surana Mercantiles Private Limited***, CA(AT)(I) No. 1059 of 2022, NCLAT Order dated 27.11.2024.

k) that only civil court has jurisdiction to declare whether the deed of guarantee is void, and it is neither given to the WBERC nor this tribunal to pronounce on its voidness. Indeed, the appellant itself has approached the civil court twice, first with Commercial O.S.266 of 2017 and then with Money suit 1 of 2022. While the former was withdrawn, the latter is still pending. And so far as the present case is concerned, inasmuch as this tribunal is not vested with the power to declare the invalidity of the deed of guarantee under Sec.23 of the Contract Act, it has to act on it.

l) Regulation 5.13.2 on its face does not bar a licensee under the Electricity Act to give corporate guarantee, but only requires it to obtain prior permission of the Commission. And, in terms of Sec.142 of the Electricity Act the consequence that would visit any breach of Regulations is penal action merely. Nowhere either in the Act or in the Regulation is there a legislative intent indicated to hold that violation of Regulation 5.13.2 would the corporate guarantee to be

void. Reliance was placed on ***Nanakram Vs Kundalrai,*** [(1986) 3 SCC 83]; ***Nutan Kumar Vs IInd ADJ***, [(2002) 8 SCC 31]; ***G. Muthaiah vs. Dr J. Rajapriya***, [2026 SCC OnLine Mad 7429]; and ***PI Opportunities Fund-I Vs Financial Software & Systems (P) Ltd,*** [2025 SCC OnLine Mad 7113].

Discussion & Decision

6.1 The long narration of facts and the arguments built on them concern themselves principally with addressing a solitary issue: whether the deed of guarantee which IPCL had executed on 23.09.2016 is valid and establish the subsistence of an undisputed contractual relationship between IPCL and the SBI for holding the existence of a financial debt for the purposes of Sec.7 IBC, and the extent to which it creates a binding relationship. Looking just at this issue superficially, we do not consider that it is either novel or unfamiliar to this tribunal.

6.2 But this case is slightly different, for the defence which the corporate debtor has raised for defending the SBI's petition for initiating CIRP against IPCL is alleged to be founded on a void agreement of guarantee under Sec.24 of the Contract Act, as its object is unlawful and opposed to public policy within the meaning of Sec.23 thereof. The pointed contention of IPCL is that it being an electricity distribution licensee, it is bound by the Electricity Act, 2003, and WBERC Regulations, and even though Regulation 5.13.2 requires prior consent of the Commission for executing the deed of guarantee, it has not been obtained, and hence it is unlawful. This leads to the next issue: how far should this tribunal

engage itself with this issue, more so when the proceedings under the tribunal are summary in character?

6.3 This tribunal's jurisdiction is well trimmed to fit in with the settled and well entrenched legal position: to ascertain whether the defence is bonafide and genuine, or is it a fakery. A more than a strong prima facie view to be obtained through the rule of preponderating probability. See the ratio in ***Deepak Raheja and another Vs Omkara Assets Reconstruction Private Ltd.*** [2026 SCC OnLine SC 2184]; ***Hardeep Singh Sawhney Vs Sawhney Builders Pvt., Ltd.,*** [(2019)217 Comp.Cases 506 (NCLAT)]; ***Progfin Pvt., Ltd., Vs Ganesh Benzoplast*** [(2026) ibclaw.in 786 (NCLAT)]. After all, in a summary proceeding for ascertaining the existence of debt and default, the twin criteria necessary for admitting a corporate debtor to CIRP, the document establishing contractual relationship between the corporate debtor and the financial creditor should either be beyond dispute, at least free of any probable dispute. Where the very document involved requires serious examination for its construction, then tribunal may not be the forum to approach. This therefore, leads to the next question: Whether this tribunal has authority to declare that the deed of guarantee which IPCL has indisputably executed, which SBI relies on fastening a liability – the financial debt, as void under Sec.24 read with Sec.23 of the Contract Act? This tribunal is conscious that in ***Umesh Kumar Vs Narendra Kumar Sharma*** [2024 SCC OnLine NCLAT 226], this tribunal has taken a view that it cannot go into the question of tenability or validity of a contractual agreement.

6.4 And there is an ancillary issue on limitation. But given the intricacies of the issue raised, this has taken the back seat.

7. As outlined earlier, the thrust of the arguments on either side is whether the deed of corporate guarantee is void. And the appellant also comes out with an alternative argument and contends that even if the deed of guarantee which IPCL has executed is considered valid, then its operation must be limited to separate business, and that it should not be construed as involving the entire business of the corporate debtor.

8.1. The deed of corporate guarantee came to be executed because when IPCL contemplated the takeover of MEL, and the lenders of MEL had set it as a precondition to enable it happen. IPCL did resist this idea, and on 29.07.2016 it did inform the lenders that providing a corporate guarantee is prohibited by WBERC Regulations, but the lenders provided IPCL with a set of three legal opinions, all of which are to the effect that the Regulations only bar providing guarantee in respect of the 'Regulated assets' of IPCL and its 'surplus amount'. The expressions 'regulated asset', or 'surplus amount' however, are coinage of those who have offered the legal opinion or drafted the deed of guarantee, whereas the WBERC Regulation employs the expressions such as Core, Non-Core, Other and Separate businesses or activities (to which pointed reference will be made in subsequent paragraphs). Here, we need to make few statements to the parties:

a) We give no credence to the legal opinions which might have provided a context for IPCL to execute the guarantee deed, for IPCL is no child to complain that it was induced into executing it. It was keen on a

commercial venture of acquiring MEL, and if it had felt that the pre-condition which the lenders of MEL had set would involve contravention of the Regulations and might invite complications to its core-business, it was free to disengage itself from its proposed commercial venture. It was justly ambitious with the keenness to expand its business, yielded to the demands of the lenders of MEL, and it cannot complain that it was induced by the lenders.

b) The second aspect is that, SBI also cannot plead innocence, as it knows before hand – before the deed of guarantee was executed that execution of the deed of guarantee as demanded by it would involve the need to obtain prior consent of WBERC before executing the guarantee deed.

c) Now that it is a bilateral document, both the parties have invested their creative intelligence or expertise to outmanoeuvre, if not to outsmart the provisions of Electricity Act and the statutory Regulations made thereunder through the backdoor usage of certain non-statutory expressions. Like IPCL, SBI also had its options: (i) either to withdraw the precondition of executing the deed of guarantee; or (ii) denying approval for IPCL's takeover of MEL; or (iii) to wait for WBERC to apply its mind in terms of the Regulations. It did neither. In essence, both the parties were overdriven by commercial ambitions to pursue, and got into a contractual relationship through a consciously contrived drafting (of the agreement) to hoodwink the Electricity Act, its Regulations and the Regulator. And it is they who call themselves angel and the other the devil before us.

8.2 And there are couple of facts which can be clarified straightway:

a) Keeping the controversial deed of guarantee aside, somewhere in the course of the arguments, SBI, brought in a supplementary argument to fortify its principal argument on the validity of the guarantee deed through an affidavit dated 23.09.2016, executed for IPCL which was to the effect that executing a deed of corporate guarantee would not contravene the Regulations. This is least appealing for when the Regulations assert themselves on the strength of its statutory origin, it is not given to those whom the Regulations govern to stand against them. The affidavit lacks the strength to substitute the effect of the Regulations.

b) Turning to the appellant, it has contended that when the Hon'ble Supreme Court in its judgement in C.A.8178 of 2023, dated,14.02.2025 required the Adjudicating Authority to consider the rejoinder of the SBI, the latter should have only tested the extent to which the rejoinder would impact its earlier judgement dismissing the petition under Sec.7 IBC dated, 30.10.2023, and by engaging in a *de novo* consideration, it has exceeded the terms of remand. This argument also is a distraction, since the very judgement of the Hon'ble Supreme Court (whose operative portion is captured in paragraph 1.2 above) belies it.

9. This now shifts the focus for a consideration of the core-issue. And, as indicated, there is an issue on the extent of our jurisdiction, and that will be considered alongside. On 23.09.2016, IPCL executed a Deed of Guarantee in favour of SBICAP Trustee Company Ltd., The material

terms of this document which the parties relied on, or debated over are extracted below:

> ***"Recital (F) :*** *One of the conditions of the Amendment Agreement is* ***that the guarantor shall enter into this guarantee in favour of Phase I Security Trustee for the benefit of the Phase I Lenders*** *and provide a Guarantee and undertaking to secure the Guaranteed Obligation.*
>
> *2.1 The Guarantor, hereby irrevocably, absolutely and unconditionally guarantees to the* ***Phase I Security Trustee*** *for the benefit of the Phase I Lenders that the Borrower and/or the Guarantor shall duly and punctually pay/repay the Guaranteed Obligations stipulated in or payable in accordance with the terms and conditions contained in the Existing Common Loan Agreement and the other Finance Documents and on the failure of the Borrower to pay the Guaranteed Obligations (or any part thereof) in accordance with the terms and conditions contained in the Existing Common Loan Agreement (or any part thereof) or upon the occurrence of an Event of Default, the Guarantor shall forthwith pay, from the Non Regulated Asset, to the Phase I Lenders, without demur or protest or without the right of any set off, deductions or adjustments of any kind whatsoever, the amount of the Guaranteed Obligations as may be claimed by the Phase I Lenders in relation to the Phase I Facility, as stated in the Demand Certificate to be issued by the Phase I Lenders / Phase I Security Trustee.*
>
> *2.2 The Guarantor, hereby irrevocably, absolutely and unconditionally undertakes to utilize all Surplus Amounts towards meeting any shortfall in debt servicing in relation to the Phase I Project. Any such shortfall to be funded by the Guarantor shall be as may be claimed by the Phase I Lenders I in relation to the Phase I Facility, as stated in the Demand Certificate to be issued by the Phase I Lenders Phase I Security Trustee.*
>
> *2.3 The Guarantor irrevocably, absolutely and unconditionally guarantees it shall, forthwith pay to the Phase I Security Trustee, without demur or protest or without the right of any set off and/or*

deductions and/or adjustments of any kind whatsoever, the amount of the Guaranteed Obligations as may be claimed by the Phase I Security Trustee (on behalf of the Phase I Lenders) in relation to the Phase I Facility, as stated in the Demand Certificate. The Phase I Security Trustee shall be entitled to make multiple demands under this Guarantee.

2.7 In order ***to perform its obligations, under Clause 2.1 above, the Guarantor shall utilize the Non-Regulated Asset. In order to perform its obligations under Clause 2.2 above, the Guarantor shall utilize the Surplus Amounts****."*

By limiting the liability exposure to Non-Regulated assets and Surplus Amount in Clause 2.7, the deed of guarantee gives an impression that the guarantee provided by IPCL is a limited guarantee, but as would be seen later, it is merely a phrasal camouflage that conceals its actual intent and extent.

10. For understanding what 'Non-Regulated assets' and 'Surplus Amounts', mean, the definitions to these expressions as provided in Clause 1.1 of the guarantee-deed need to be referred to. They are as below:

"Non Regulated Asset *shall mean all assets of the Guarantor other than the Regulated Asset.*

Regulated Asset *shall mean all the revenues and receivables of business and operations of the Dishergarh Electric License.*

Surplus Amounts *shall mean the surplus funds generated from the Regulated Asset after meeting the requirements of the Dishergarh Electric License towards payment of statutory dues, capital expenditure, operating costs and debt servicing payments in relation to the Regulated Asset and is determined in accordance with the Dishergarh Electric License."*

11. In our endeavour, we consider it appropriate not just to confine our enquiry superficially to the factum of execution of the deed of guarantee

in contravention to Regulation 5.13.2, but also to ascertain prima facie how specific terms thereof may come into conflict with the said Regulation. Having said that, we do not propose to travel the entire distance to match the jurisdiction of a civil court. It is this understanding that would set the tone for testing the validity of the deed of guarantee under Sec.24 of the Contract Act. And the extent to which we should engage in this appeal. Accordingly, we deduce:

a) Non-Regulated assets are negatively defined in Clause 1.1 of the guarantee-deed as those which are not Regulated assets.
b) Regulated asset is defined to *mean* (hence not exhaustive) all the revenues and receivable of the business and operations of the Dishergarh Electric License. Therefore, 'Regulated assets', according to this definition, is mere trade receivables and other revenues of IPCL, and does not include the existing tangible assets with which IPCL is carrying its electricity distribution business.
c) This would now imply all the fixed and tangible assets of IPCL which are necessary for working the distribution licence has been made part of the definition of Non-Regulated Assets. Indeed, if the definition is closely read it does not exclude even the electricity distribution-license from the purview of Non-Regulated assets.
d) Now, turning to 'Surplus Amounts', by definition, it is the balance available after deducting few heads of expenditure from the revenue and receivables (which constitute Regulated assets) obtained from working the distribution licence.

12.1 While the appellant attacked the guarantee deed in terms of Regulation 5.13.2, it has to be read only in conjunction with, and subordinate to Sec.51 of the Electricity Act. They read:

Provision of law	Text of the Provision
Sec. 51 of the Electricity Act	*51. Other businesses of distribution licensees.–* *A distribution licensee may, with prior intimation to the Appropriate Commission, engage in any other business for optimum utilisation of its assets:* ***Provided that a proportion of the revenues derived from such business shall, as may be specified by the concerned State Commission, be utilised for reducing its charges for wheeling:*** ***Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidises in any way such business undertaking nor encumbers its distribution assets in any way to support such business****: Provided also that nothing contained in this section shall apply to a local authority engaged, before the commencement of this Act, in the business of distribution of electricity. Provisions with respect to electricity traders*

Regulation 5.13.2	*The licensee shall obtain prior written consent from the Commission in making any loans to, or issuing any guarantee for any obligation of any person which is beyond the normal area of business activities of the licensee in respect of its core activities. Loan to the employees pursuant to the terms of services and advances to the suppliers etc. in the ordinary course of business are excluded from the requirement to seek such approval. If any affiliates of the licensee undertake any loan for which the licensee's business may be effected directly or indirectly then in such case licensee is required to obtain such written consent from the Commission in a manner as already specified.*

12.2 Sec.51 of the Electricity Act deals with the Other Business of a distribution licensee, but the Act does not define, other business. As would be seen shortly, it is defined in the Regulations. Set in the context, the definitions of Core, Non-Core, Separate and Other business as provided in the Regulations are important. They read:

Regulation No.	Extract of the Regulation
1.3.1 (xiv)	*"Core Businesses / Activities" means the business(es) / activity(es) in relation to transmission or distribution or trading of electricity as mentioned in the licence granted to the licensee by the Commission or as specified in these Regulations for a deemed licensee;*
1.3.1 (xxxiv)	*"Non-core Business /Activity" means such business or activity which is not core business of the license but it is incidental or consequential or necessary part of the core*

	business in order to facilitate and / or ensure the activity of the core business as per licence;
1.3.1 (xxxvii)	*"Other Business" means any business other than the generation or activities of licensed business(es) and non-core business(es) of the licensee but by utilizing the assets of the licensed business;*
1.3.1 (xlvi)	*"Separate Business" means any business of the licensee other than the functions or activities of Core Business(es), Non-core business(es) and other business;*

If Sec.51 of the Electricity Act is taken alongside the definition of Other Assets in Regulation 1.3.1(xxxvii), it becomes evident that it means any business of a licensee other than its core and non-core businesses for which the assets of the core-business are utilized. And Proviso II emphasises that a distribution licensee shall ensure that it neither subsidises its distribution business or undertaking nor encumber its distribution assets in any way to support such business.

12.3 Proceeding further, Sec.2(75) of the Electricity Act defines "Utility" to mean,

> "*the electrical lines or electrical plant, and includes all lands, buildings, works and materials attached thereto belonging to any person acting as a generating company or licensee under the provisions of the Act.*"

Sec.17(3) declares that "*No licensee shall at any time assign his license or transfer his utility, or any part thereof, by sale, lease, or exchange, or otherwise without the prior approval of the Appropriate Authority*, and proceeds to further declare under Sec.17(4) that any transaction done in violation inter alia of Sec.17(3) is void. It may be relevance to state that in ***PTC India Ltd., Vs CERC*** [(2010) 4 SCC 603], a Constitutional Bench

of the Hon'ble Supreme Court has held that the Orders of the Regulatory Commission can override even existing contracts. And even where license is revoked under Sec.19, then the consequence is that in terms of Sec.20, the Appropriate Authority (the Central and/or State Government) shall acquire the utility (or the assets) of the licensee.

12.4 Very obviously it conveys the legislative anxiety to protect the electricity distribution, for any disruption there may have an impact on the electricity distribution to the consumers. An aspect of public interest subtly conveyed but adequate enough to highlight the legislative intent.

13. Turning to 'Surplus Amounts', yet another coinage of the draftsman of the guarantee-deed, as could be seen from the extract made in paragraph 9 above, it is made of the revenues and receivables of business and operations of the licensee from its core, non-core and other businesses, minus *payment of statutory dues, capital expenditure, operating costs and debt servicing payments in relation to the Regulated Asset and is determined in accordance with* the licence granted to the IPCL.

14. It may broadly be stated that an electricity distribution licensee may not have absolute control over the surplus income or profits from its core, non-core and other businesses, for they are reckoned for fixation of tariff. Sec.61,62 plus the WBERC Tariff Regulations backed by few other provisions of the Act throw light on it.

15. The scheme of the Electricity Act indicates a legislative idea that one may walk into become an electricity distribution licencee with its '*utility*' (assets), but once it commences its business, it neither has absolute control over the profits it makes, nor any control over its utility which the

right of ownership ordinarily vests in the owner of assets, nor will it have control over its assets even on quitting the business, as they now become liable for acquisition. It is therefore, mandatory that both the one who is a licensee, and the one who chooses to deal with it, ought to be aware how the scheme of Electricity Act works and the purpose behind it. As in the working of every statute, there is an internal logic about how Electricity Act is structured for its effective and integrated working of the different aspects it deals in.

16. Regulation 5.13.2 therefore has to be understood in the backdrop of the statutory provisions and in the context of the legislative anxiety to preserve the assets of the distribution business, which in terms of the definitions in the Regulations is the basis for the Core, Non-Core and Other businesses of the distribution licensee plus the income generated therefrom. This signifies the necessity for obtaining prior consent of the WBERC under Regulation 5.13.2 before providing any guarantee.

17. Now, if the terms of the agreement of guarantee are tested on the plane of the legislative intent, the ingenuity and the intent of the contracting parties to carefully sidestep Regulation 5.13.2 through a bilateral agreement becomes glaringly evident. In the guise of Non-Regulated assets and Surplus Amounts, the deed of guarantee has brought within its folds even the tangible and other fixed assets of IPCL and the surplus income which a distribution licensee may generate from its business.

18. The moment there is legislative space of granting consent implies that Regulation 5.13.2 does not prohibit offering a guarantee by a distribution licensee. After all, to 'consent' is not a synonym for to 'bar'. It may not

be difficult to fathom that there is considerable public interest involved in Regulation 5.13.2, as it only reflects the legislative intent to secure the assets of the distribution licensee from encumbrance, as could be gathered from the tenor of Sec.17(3), 20(1) and Proviso to Sec.51. Set in the context, it may be said that the need for insistence on prior consent of WBERC is aimed at balancing the public interest involved in distribution of electricity to public, with the commercial necessity of a distribution licensee to encumber its assets. The object behind this appears not to expose the public utility involved in the distribution of electricity to the consumers, which an electricity distribution licensee has undertaken, to the peril of being disrupted by the creditors of the licensee. It is hence Regulation 5.13.2 does not bar providing guarantee, but only insists that prior permission of the Commission be obtained before it is so given.

19.1 Pausing here, we now turn to the point on the validity and enforceability of the deed of guarantee in the context of its ability to feed a petition under Sec.7 of the Code, the appellant would come out with two arguments:

a) that the deed of guarantee is void under Sec.23 of the Contract Act, as it is violative of public policy involved in Regulation 5.13.2; and

b) at any rate, when the Commission in its third Order dated 22.12.2021, had held it to be so, this tribunal may not sit in appeal over the same. In other words, according to the appellant, it falls within the exclusive jurisdiction of the WBERC to test the deed of guarantee on the touchstone of Regulation 5.13.2 which it is empowered and duty bound

to administer, and when once it has exercised its exclusive jurisdiction, it is not given to this tribunal, which is constituted for a limited purpose of resolving the insolvency of the corporate debtors, to evaluate the correctness of the decision of the WBERC. In plain terms, its contention is that this tribunal cannot overrule the finding/decision of the WBERC as an appellate tribunal over the latter not withstanding Sec.238 of the Code.

19.2 The respondent however, would contend:

a) that only civil court has jurisdiction to declare that whether the deed of guarantee is void, and it is neither given to the WBERC nor this tribunal to pronounce on its voidness. Indeed, the appellant itself has approached the civil court twice, first with Commercial O.S.266 of 2017 and then with Money suit 1 of 2022. While the former was withdrawn, the latter is still pending. And so far as the present case is concerned, inasmuch as the appellate tribunal is not vested with the power to declare the invalidity of the deed of guarantee under Sec.23 of the Contract Act, it has to act on it.

b) Regulation 5.13.2 on its face does not bar a licensee under the Electricity Act to give corporate guarantee, but only requires it to obtain prior permission of the Commission. And, in terms of Sec.142 of the Electricity Act,2003, the consequence that would visit any breach of Regulations is penal action merely. Nowhere, either in the Act or in the Regulation is there a legislative intent indicated to hold that violation of Regulation 5.13.2 would render the deed of guarantee void.

c) At any rate, Sec.238 of the Code will have overriding effect on all provisions to the contrary.

20. Here two aspects arise: (a) whether the contract of guarantee is void under Sec.23 of the Contract Act on which the appellant laid considerable emphasis; and (b) effect of the Sec.238 of the Code.

21. First to the efficacy of Sec.238 of the Code to save the deed of guarantee. ***Macquarie Bank Ltd. Vs Shilpi Cable Technologies Ltd***., [(2018) 2 SCC 674, the Hon'ble Supreme Court has held that the non obstante clause in section 238 will operate only when there is an inconsistency between the IBC and any other enactment. In the instant case, both the Electricity Act and the Code operates in different and distinct spheres, and there is hardly any conflict in their working. Secondly, for invoking the Code, there need to exist a creditor-debtor relations which is traceable only to a contract. However, formation of contract consistent with the special requirement of a special statute (such as in the instant case where prior consent of WBERC is required for creating a creditor-guarantor relationship) cannot be considered to be inconsistent with the Code, for the Code will have relevance post the formation of the contract and requires the existence of rights that flow from the contract. Thirdly, and specific to the facts of this case, here is a scenario where the parties have contrived a strategy to hijack the criterion prescribed Regulation 5.13.2 for the formation of contract of guarantee through the special terms of the contract which they have chosen through crafty drafting, should the same be saved under Sec.238 of the Code? It appears to be more than a strong probability that tend to indicate that the parties to the deed of guarantee apparently have

attempted to play fraud on the Electricity Act and the Regulations framed thereunder. It is not avoidance of a statutory procedure but evading it by subterfuge. And, to us, Sec.238 neither textually nor in spirit encourage fraud on statute.

22.1 Turning to the issue as to whether the deed of guarantee is unlawful or opposed to public policy under Sec.24 of the Contract Act, this has to be read in conjunction with Sec.23 of the Contract Act that defines what constitutes unlawful objective or consideration.

> "*24. Agreements void, if considerations and objects unlawful in part.—If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void"*

Sec.23 of the Act reads:

> "*23. What considerations and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless—*
>
> *it is forbidden by law;*
>
> *or is of such a nature that if permitted, it would defeat the provisions of any law; or*
>
> *is fraudulent; or*
>
> *involves or implies injury to the person or property of another; or*
>
> *the Court regards it as immoral, or opposed to public policy.*
>
> *In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."*

For a contract to be rendered void, as stated, its object or consideration must be unlawful. However, if Regulation 5.13.2 is analysed to ascertain

the same, as explained it has not barred the grant of guarantee but only insists that it may be done but only with the prior consent.

22.2 Here the SBI would contend that nowhere in the Electricity Act or in the Regulations it is declared that the breach of Regulation 5.13.2 would render the execution of guarantee sans the prior consent of WBERC void, and that it only invites penalty under Sec.142 of the Electricity Act. Sec.142 provides that the Appropriate Authority (the Central or the State Government, as the case may be) can impose a penalty not exceeding ₹1.0 lakh for each contravention, and in case of continuing contravention ₹6,000/- for every day of such contravention. And this is in addition to any other penal action to which the party breaching the Act or the Regulation may be otherwise exposed to. Does it not then imply that the respondent, by its own statement attempt to legitimise that which is forbidden by law. And, a contract whose object or consideration is forbidden by law is equally void under Sec.24 read with Sec.23 of the Contract Act.

22.3 In the context the following passage in paragraph 26 of the judgement of the three Judges bench of the Hon'ble Supreme Court in ***Asha John Divianathan Vs Vikram Malhotra*** [(2021)19 SCC 629 : AIR 2021 SC 2932] is apposite. It reads:

> *"It is well established that a contract is void if prohibited by a statute under a penalty, even without express declaration that the contract is void, because such a penalty implies a prohibition. Further, it is settled that* ***prohibition and negative words can rarely be directory****.... **although it may be a case of seeking previous permission it is in the nature of prohibition** as observed by a three-Judge Bench of this Court in* ***Mannalal***

> ***Khetan v. Kedar Nath Khetan****. In every case where a statute imposes a penalty for doing an act, though, the act not prohibited, yet the thing is unlawful because it is not intended that a statute would impose a penalty for a lawful act. When penalty is imposed by statute for the purpose of preventing something from being done on some ground of public policy, the thing prohibited, if done, will be treated as void, even though the penalty if imposed is not enforceable."*

This law has been candidly declared. We therefore, need not now delve on the extent of our authority to hold the deed of guarantee void, but in the context of the law declared by the Hon'ble Supreme Court, can we blindfold ourselves and continue to treat the same to be valid? Thus even though the debt, and default in repayment are otherwise established, yet in the instant case the enforceability of the agreement of guarantee has come seriously under the scanner. It is not the public interest involved in the core, non-core businesses of IPCL, but the over-ambitious attempt to outsmart the law and the Regulators that it constituted through a customised designer-agreement of guarantee that has spoiled the fortune for the SBI in this appeal.

23. It is precisely for this reason, the enforceability of the deed of guarantee as regards the application of 'surplus amount' also comes under the forensic scanner. If the definition of Non-Regulated assets of IPCL in the guarantee-deed creates an unassailable predicament for it to feed a contractual relationship between IPCL and the SBI vis-à-vis the former's core, non-core and other business, then as a corollary, even the income that are generated from those assets may not answer the claim of SBI, more so when they also come under the purview of Regulators in tariff-fixation.

24. Now, we propose to address the other extreme view or argument which the appellants have made. It is on the effect of the Order of the WBERC, dated 22.12.2021, the Third Order. If it is perused, the Regulatory Commission has only focused on the need to obtain prior permission under Regulation 5.13.2 but without considering the express terms of the deed of guarantee limiting its scope. And it has not chosen to explain how Separate Business or the Surplus Amount from Other Business and Separate Business of IPCL will fall within its purview of its jurisdiction under Regulation 5.15.1. Interestingly enough the appellant after losing twice successively in its attempt to obtain *ex-post facto* permission under Regulation 5.13.2 (and without disclosing about the execution of the deed of guarantee) has moved the WBERC on the third occasion only under Regulation 5.15.1. It reads:

> *"Regulation 5.15.1 The licensee shall refer all disputes under the licence relating to interpretation of the licence and the terms and conditions thereof to the Commission for their determination."*

Under the aforesaid Regulation, WBERC's jurisdiction may be invoked only for interpreting the license when a dispute involving the interpretation of the licence arises. Given the facts of this case, there is neither a dispute over the interpretation of the licence involved, nor the WBERC has the authority to interpret any other document other than a licence. Very obviously the observation of WBERC on the validity of the deed of guarantee is without jurisdiction. At any rate it cannot affect the Separate Business or Income from Other and Separate businesses of IPCL. The conflict of jurisdiction between the WBERC and this tribunal may arise only where WBERC has acted within its jurisdiction. Therefore,

the need to consider whether it requires a suit to declare that the deed of guarantee is void or to ascertain how far Sec.238 of the Code will impact this case will only have academic relevance, and we avoid dealing the issue as it is plainly unnecessary.

25. The respondent has put forth another contention, when it argued that IPCL has executed a deed of indemnity dated 23.09.2016. This however, is seen to have been executed only in favour of Rural Electrification Corporation Ltd., (REC) and not the SBI. Secondly, it is doubtful if this indemnity document without any qualification can affect the core-business of IPCL, for that might interfere with the Regulations. At any rate this issue has to be left open as it does not merit consideration in this appeal. Therefore, even the argument based on the Indemnity Deed dated 23.09.2016 is of no avail to the respondent.

26. To sum up, since the extent of our authority to state the most obvious can be doubted or debated, led by the rule of preponderating probability, we merely hold that there is more than a strong prima facie case to conclude that there is considerable merit in the contention of the appellants that we decide that it will not be safe to hold that the deed of guarantee dated 23.09.2016 has created a legal relationship between IPCL and the SBI, for the latter to invoke Sec.7 IBC. As stated earlier, the SBI knew it beforehand when IPCL alerted it that offering guarantee might have to negotiate Regulation 5.13.2. While both IPCL and SBI joined to execute the deed of guarantee, today SBI might feel stranded for losing an advantage, which it might have thought that it had secured through the deed of corporate guarantee for realising its debts of MEL,

but is it not true *in pari delicto potior est conditio defendentis* ? Law asserts, and it shall at all times, if the rule of law should prevail. And, the law serves best those who serve it best.

27. Having stated thus, all is not lost entirely for SBI yet, for it has still the Separate Business of IPCL, its assets and income therefor, to secure the debt, for they do not come under the purview of the Regulators under the Electricity Act. Indeed, the IPCL itself has listed a list of assets of its separate business which according to it, it has transferred to its cent percent subsidiary, IPCL Power Limited' (formerly known as – Parmeshi Energy Limited). And the assets read as below: (i) 25 MW wind power plant in Gujarat; (ii) Smart metering project in Madhya Pradesh; (iii)133 MW solar project in Maharashtra; (iv)150 KW distributed solar project for large consumers; and (v) 50% stake in a JV company with Uniper SE.

28. There is one last aspect which requires to be addressed. It is on Limitation. The appellant submitted that the respondent had stated different dates of default at different places. In Part IV of the application, SBI has merely stated "*default as on 31.01.2020"* without expressly mentioning the date of default, whereas in the list of dates it was mentioned as 28.12.2017. In the rejoinder, SBI states that the date of default to be the 7th day from the date of second demand notice issued on 07.02.2020. The Adjudicating Authority however reckoned the date of default from the date of failure to comply with the first demand notice dated 20.12.2017. In this instant case, the Sec.7 application was filed on 26.02.2020, it is within time irrespective of which of the three dates - 28.12.2017, 31.01.2020 or 15.02.2020 that could be gathered from the records. The

appellant herein is not a stranger to the loan transaction and he knows and at all times ought to know the facts pertaining to the loan transaction. Hence a petition filed without specifying the date of default ipso facto does not feed a plea of bar of limitation for instituting creditor's petition under Sec.7 of the Code. This precisely has been the view taken in ***Manmohan Singh Jain Vs State Bank of India*** [(2021) SCC OnLine NCLAT 5983], and few other authorities on the aspect. The plea founded on bar of limitation which the appellant has raised, thus fails.

29. Now inasmuch as the deed of guarantee executed by IPCL is partially valid, and the default in repayment of debt by the principal borrower MEL is not disputed, IPCL cannot escape its obligation to repay the debts of the MEL as its corporate guarantor but that will be limited only to the extent of the assets of its separate business and surplus amount from its other and separate businesses.

30. We therefore have little hesitation in holding that the Order of the Adjudicating Authority directing initiation of CIRP of IPCL does not require to be interfered with. But the game still has not ended, and as we are still required to provide necessary directions to the resolution professional as to the nature of assets of IPCL which she is under a statutory duty to manage. This has become necessary since despite the fact that the deed of guarantee as provided by IPCL is limited, she has taken control IPCL in its entirety, for which we do not find any justification. We therefore, do not consider it to be safe to leave to her judgement as to the specific assets that she may bring under her management any longer.

31. In conclusion, we hold:

a) The deed of guarantee, dated 23.09.2016, to the extent it relates to the separate business of IPCL, is enforceable in law and hence it can be acted upon to that extent it has created a legal relationship between IPCL and SBI for sustaining the finding of the Adjudicating Authority in its judgement, dated 15.05.2026, about the existence of financial debt and its default.

b) Only the separate business and income from the separate business will alone be liable to answer the obligations created by the deed of guarantee dated 23.09.2016.

c) As to the liability of the surplus income generated from the core, non-core and other businesses of IPCL, the Resolution Professional is directed to approach the WBERC, for the WBERC retains control over the profits of these businesses.

d) The resolution professional is directed to take charge of the assets of the separate business of IPCL, if it has not already taken plus income therefrom, which are now held by its wholly owned subsidiary, 'IPCL Power Limited' (formerly known as – Parmeshi Energy Limited).

e) If the resolution professional, has materials with him to show any omission on the part of IPCL to transfer any of its specific asset of its separate business, she is permitted to apply to the Adjudicating Authority for obtaining the same. And, if any such application is moved, the Adjudicating Authority is required to

pass appropriate orders on the same but only after granting IPCL an opportunity of being heard in the matter.

f) The resolution professional is directed to handover the core, non-core and other business (as defined by the WBERC Regulation) of IPCL to its erstwhile management immediately after 30 days from today. And she will preserve the present status quo till then, except keeping the IPCL as a going concern.

g) Anything which the resolution professional might have undertaken to affect the assets of the core, non-core and other businesses (as defined by the WBERC Regulation) of the IPCL pursuant to the impugned judgment of the Adjudicating Authority shall stand set aside.

The appeal is disposed of in the manner indicated above. No costs.

[Justice N. Seshasayee]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

VG/AA/MS/AK