

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

Company Appeal (AT) (Insolvency) No. 78 of 2024

[Arising out of Order dated 03.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-IV in CP (IB) 692/MB/2023]

IN THE MATTER OF:

**Siddharth Satish Katariya (Ex-Director)
Superfine Profile and Extrusions Pvt. Ltd.
Vs.**

....Appellant

Central Bank of India & Anr.

...Respondents

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Mr. Lalit Katariya, Mr. Akhil Sachar, Ms. Sunanda Tulsyan, Advocates.

For Respondents: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Kunal Tandon, Mr. Rahul Nagar, Ms. Niti Jain, Ms. Bhavna Vijay, Advocates and Mr. D. K. Dhoke, officer for CBI for R-1.

**J U D G M E N T
(14th August, 2024)**

Ashok Bhushan, J.

1. This Appeal by Suspended Director of the Corporate Debtor has been filed challenging the order dated 03.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-IV admitting Section 7 application filed by the Central Bank of India.

2. Brief facts of the case necessary to be noticed for deciding this Appeal are:-

2.1. Central Bank of India issued a sanction letter dated 27.11.2013 wherein certain credit facilities were sanctioned to the Corporate Debtor which included Cash Credit, Term Loan Non-Fund Based Limits. On 22.08.2015, a Corporate Guarantee deed was executed by the Corporate Debtor- Superfine Profile and Extrusions Pvt. Ltd. to indemnify the Central Bank of India Consortium for an amount not exceeding Rs.73.61 Crore. Another Corporate Guarantee Deed was executed on 18.11.2016 by the Corporate Debtor in favour of Central Bank of India, Indian Bank and Oriental Bank of Commerce (Now Punjab National Bank). On 26.12.2019, letter of sanction was issued by the Central Bank of India to Superfine Metals Pvt. Ltd., the Principal Borrower for Ad hoc Limit of Rs.3.70 Crores. Another sanction letter dated 09.09.2020 was issued for FITL Scheme for a sum of Rs.3,16,90,762/-, in sanction letter dated 26.12.2019 and 09.09.2020, Bank of Maharashtra was also added in Consortium but no disbursement took place by the Bank of Maharashtra). On 06.11.2020, new Corporate Guarantee was executed for the Central Bank of India, Indian Bank, Oriental Bank of Commerce (now PNB) and Bank of Maharashtra. On 06.11.2020, Working Capital Consortium Agreement was also executed between the Corporate Debtor and the Consortium Bank. Account of Superfine Metal was classified as Non-Performing Asset (NPA) on 29.11.2020. On 29.06.2022, Notice under Section 13(2) of the SARFAESI Act was issued upon the Appellant by the Central Bank of India. On 06.03.2023, a demand notice was issued by the Central Bank of India to the Corporate Debtor calling upon the Corporate Debtor to pay the defaulted amount. After issuance of notice dated 06.03.2023, an application under

Section 7 was filed by the Central Bank of India claiming total debt and default of Rs.94,71,23,119/- as on 06.03.2023. Part-IV contains the details of nature of facilities i.e. Cash Credit, Term Loan, FITL and Cash Credit Adhoc. A reply to Section 7 application was filed by the Corporate Debtor. Letter was also sent by the Corporate Debtor submitting the restructuring proposal on 10.10.2023. Adjudicating Authority vide impugned order admitted Section 7 application holding that the guarantee was invoked by notice dated 06.03.2023. Corporate Guarantee Deeds dated 22.08.2015 and 18.11.2016 were invoked by notice dated 06.03.2023. Application is filed within time after invocation of guarantee on 06.03.2023. Application is not barred by Section 10 A. Aggrieved by the order admitting Section 7 application, this Appeal has been filed.

3. In the Appeal, it was submitted that the Appellant has already submitted a re-structuring proposal which is under consideration. Counsel for the Bank has also submitted that it has no objection in considering the proposal for restructuring. On 19.01.2024, this Tribunal passed following order:-

“19.01.2024: Learned counsel for the Appellant submits that the restructuring proposal submitted by the Appellant on 08.11.2023 which was responded by the Central Bank of India, the lead bank on 18.11.2023 informing that the restructuring proposal can be considered only after completion of Forensic Audit and fresh valuation of the primary and collateral securities of all group companies. It is submitted that the fresh valuation was completed on 26.12.2023 and Forensic Audit has been completed only

on 17.01.2024. It is submitted that the Bank is now to consider and take decision on restricting proposal dated 08.11.2023.

Learned counsel for the Respondent submits that the Bank has no objection in considering the proposal, however, the formation of CoC not to be interdicted.

Let the Bank takes a decision on the restricting proposal submitted by the Appellant within two weeks from today.

Let the CoC be constituted but no further action shall be taken by the CoC till the next date.

List this Appeal on 09.02.2024. It shall be open for the Respondent to file an affidavit before the date fixed.”

4. In the Appeal, there has been further orders to await the outcome of re-structuring proposal. A detailed order was passed on 09.04.2024 listing the appeal on 13.05.2024 providing that all necessary reports for the Bank may be called for regarding the re-structuring proposal. Interim order was extended. On 22.05.2024, again following order was passed by this Tribunal:-

“22.05.2024: *Learned Counsel for the appellant referring to Additional Affidavit submits that bank had issued a letter dated 10.5.2024 indicating that no Binding Letter from Investor has yet been received. Ld. Counsel for the appellant submits that Investor has already noticed the said letter and within a short period of a week or a ten days the binding offer will be given by the Investor to the Bank and thereafter it will be finalised and further steps shall be taken for restructuring.*

Learned counsel for the bank Mr. Tondon submit that several opportunities have been granted to the appellant till date nothing concrete has come out. He submits that the Investor has not giving the binding letter and there are several shortcomings in the proposal which are submitted.

In view of the facts brought on the Additional Affidavit we are of the view that a last opportunity be given to the appellant to finalise restructuring, if any, before the next date.

List this appeal on 03.07.2024. Interim order to continue.

We make it clear that in event the if restructuring is not completed; parties shall address the submission on the next date.”

5. Ultimately, on 16.07.2024, it was informed on behalf of the Bank that the lead bank is not in favour of re-structuring of group. Re-structuring proposal could not be finalised despite several opportunities, hence, counsel for the Appellant addressed the submissions on merits.

6. Counsel for the Appellant has filed Additional-Affidavit bringing relevant documents on the record. Counsel for the Central Bank of India has filed compilation of documents on behalf of the Respondent.

7. We have heard Shri Krishnendu Datta, Learned Senior Counsel for the Appellant and Shri Abhijeet Sinha, Learned Senior Counsel for the Respondent.

8. Shri Krishnendu Datta, Learned Senior Counsel for the Appellant submits that the guarantee which has been invoked by invocation notice

dated 06.03.2023 relates to Guarantees which were executed by Corporate Guarantor on 22.08.2015 and 18.11.2016. It is submitted that after the sanction letters and the guarantee executed on 22.08.2015 and 18.11.2016 there has been further sanction of the loan by Financial Creditor. Counsel for the Appellant refers to sanction letter dated 26.12.2019 of Ad Hoc Limit and sanction letter dated 09.09.2020. With regard to FITL, it is submitted that subsequent guarantee was executed by corporate guarantor on 06.11.2020 which guarantee having not been invoked, Section 7 application filed by the Central Bank of India was not maintainable. It is submitted that in view of the subsequent sanction letters and guarantee dated 06.11.2020, earlier guarantees extended by the Corporate Debtor had come to an end and without invocation of the guarantee dated 06.11.2020, no proceeding could have been initiated. It is submitted that by subsequent sanction letters dated 26.12.2019 and 09.09.2020 and the guarantee dated 06.11.2020, contract between the parties have been novated. It is submitted that in view of the novation of the contract between the parties by virtue of Section 62 of the Contract Act, the original contract need not be performed.

9. Counsel for the Respondent refuting the submissions of the Counsel for the Appellant submits that earlier sanction letter and guarantee deed dated 22.08.2015 and 18.11.2016 still binds the Corporate Debtor by subsequent sanction letters dated 26.12.2019 and 09.09.2020, the existing securities were continued. Existing securities including the aforesaid guarantees dated 22.08.2015 and 18.11.2016 being continuing, Bank has rightly invoked the guarantees dated 22.08.2015 and 18.11.2016. It is

submitted that non-invocation of guarantee dated 06.11.2020 is inconsequential. It is submitted that the disbursements were made to the Corporate Debtor consequent to the sanction letter dated 27.11.2013 and thereafter disbursement having been made by the Financial Creditor for which repayments having not been made by the Principal Borrower, the Corporate Guarantee has been invoked by the Bank, there is no question of any novation of contract between the parties. Corporate Debtor is still bound by the guarantees executed on 22.08.2015 and 18.11.2016. The sanction letters which were issued by the Bank on 26.12.2019 and 09.09.2020 clearly contemplated that existing securities continues. It is submitted that Section 7 application was fully maintainable and has been rightly admitted by the Adjudicating Authority. It is submitted that in spite of ample opportunities granted by this Tribunal, re-structuring could not be finalised, hence, the debt and default continues.

10. We have considered the submissions of the Counsel for the parties and perused the record.

11. Before we proceed to consider the respective submissions of the Counsel for the parties, we may first notice the Notice of Invocation dated 06.03.2023. The notice dated 06.03.2023 has been brought on record by the Appellant along with Additional-Affidavit. It is useful to extract the Notice dated 06.03.2023, which is as follows:-

“To,

March 06, 2023

Superfine Profile and Extrusions Private Ltd

1267 Pratibha Dalmandai Ahemednagar-414001

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

Reference:

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

Sir,

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

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

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

Since the borrower has committed defaults. in terms of the guarantee deed dated August 22, 2015 and November 18, 2016, Superfine Profile and Extrusions Pvt Ltd have become liable to pay to us the outstanding amount of loan/credit facilities aggregating balance O/s as of 06.03.2023 Rs. 94,71,23,119.18/- (Rupees Ninety Four Crore Seventy One

Lakhs Twenty Three Thousand One Hundred and Nineteen and Eighteen Paisa) exclusive of other charges, and we hereby invoke the corporate guarantee and call upon you to pay the said amount within 10 days from the date of this notice, failing which we have been instructed to initiate the legal proceeding including but not limited to appropriate legal actions under the provisions of Insolvency & Bankruptcy Code, 2016.

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

Please note. Hence, the notice.

Yours sincerely.

*(ABHAY KULKARNI)
MANAGER
Ahmednagar”*

12. Now we come to the application under Section 7 filed by the Central Bank of India. Part-IV of the application filed by the Central Bank which contains a detail of amount claimed which included all facilities, are as follows:-

“PART IV

PARTICULARS OF FINANCIAL DEBT			
1	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	Total amount of debt granted to superfine Metals Pvt Ltd for which corporate debtor has provided corporate guarantee dated August 22, 2015 and November 18, 2016. Rs.66,21,05,008/- (Rupees Sixty-Six Crore Twenty-One Lakh Five Thousand and Eight Only).	
		Nature of Facility	A/C No.
		Amount Disbursed (Rs.)	
		Cash Credit	3056432616
		Term Loan	3305046620
		FITL	3852802470
		Cash Credit Adhoc	3793059834

		<table> <tr> <td>Total</td><td></td><td>66,21,05,008/-</td></tr> </table> <p><i>The schedule of disbursement of the aforesaid facilities is hereto annexed and marked as Annexure "D";</i></p>	Total		66,21,05,008/-															
Total		66,21,05,008/-																		
2	AMUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	<p>Total Amount of debt in default from the Corporate Debtor is Rs.94,71,23,119.18/- (Rupees Ninty Four Crore Seventy One Lakh Twenty Three Thousand One Hundred and Nineteen and Eighteen Paise Only) The break-up of the said defaulted amount is as under-</p> <table> <tr> <th>Nature of Facility</th><th>A/C No.</th><th>Amount Disbursed (Rs.)</th></tr> <tr> <td>Cash Credit</td><td>3056432616</td><td>77,85,36,496.00</td></tr> <tr> <td>Term Loan</td><td>3305046620</td><td>6,68,45,124.18</td></tr> <tr> <td>FITL</td><td>3852802470</td><td>4,15,05,088.00</td></tr> <tr> <td>Cash Credit Adhoc</td><td>3793059834</td><td>6,02,36,411.00</td></tr> <tr> <td>Total</td><td></td><td>94,71,23,119.18/-</td></tr> </table> <p><i>Hereto annexed is the copy of breakup of the defaulted amount for each facility as on 6.03.2023 annexed as Annexure "E"</i></p>	Nature of Facility	A/C No.	Amount Disbursed (Rs.)	Cash Credit	3056432616	77,85,36,496.00	Term Loan	3305046620	6,68,45,124.18	FITL	3852802470	4,15,05,088.00	Cash Credit Adhoc	3793059834	6,02,36,411.00	Total		94,71,23,119.18/-
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Cash Credit Adhoc	3793059834	6,02,36,411.00																		
Total		94,71,23,119.18/-																		

13. Above Part-IV refers to breakup of the defaulted amount for each facility as on 06.03.2023 as Annexure-E. Annexure E although has not annexed in the Appeal but in the compilation of documents filed on behalf of the Bank. The said Annexure E is at Pages 47 to 52 which we shall notice hereinafter.

14. The guarantees which were executed by the Corporate Debtor dated 22.08.2015 and 18.11.2016 have been brought on the record by the Appellant. Clause 1 of the Guarantee Deed dated 22.08.2015 provide that if

any time default shall be made by the borrower in payment, the guarantors shall forthwith on demand pay to the Central Bank of India amount not exceeding Rs. 73.61 Crores. Para 1 of the Guarantee Deed is as follows:-

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

15. Subsequent Guarantee Deed dated 18.11.2016 has given a guarantee for sum not exceeding of Rs.92.47 Crores. Corporate Guarantee dated 18.11.2016 is as follows:-

“CORPORATE/DEED OF GUARANTEE

This Deed of Guarantee made on this 18th day of November 2016 by SUPERFINE PROFILE AND EXTRUSION PVT LTD, a company incorporated under the Companies Act 1956 and having its registered office at 'Pratibha', 1267 Dalmandai, Ahmednagar hereinafter referred to as the Guarantors which expression shall unless repugnant to context or meaning thereof be deemed to include its successor and assigns in favour of Central Bank of India Consortium represented by Central Bank of India as Lead Bank as defined in the working capital consortium agreement dated 18th November 2016 (hereinafter referred to as Lead Bank which expression shall unless repugnant to the context or meaning thereof be deemed to include the Central Bank of India and other consortium member banks constituting the Central Bank of India Consortium from time to time or each of them or any one or more of them and their respective successor and assigns) whereas in terms of the working capital consortium Agreement dated 18th November 2016 and Joint Deed of Hypothecation dated 18th November 2016 executed by SUPERFINE METALS PVT LTD, a company within the meaning of the Companies Act 1956 and having its registered office at 'Pratibha', 1267 Dalmandai, Ahmednagar (Hereinafter referred to as the Borrower which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns) with the Lead Bank of the other part on the 18th November 2016 executed between the Borrower and the Lead Bank (hereinafter the said working capital consortium agreement, Joint Deed of Hypothecation and Supplement Agreement collectively referred to as the said Agreement of Loan) the Lead Bank/Central Bank of India consortium has agreed to grant to the borrower all or some or any of the credit facilities either in Indian or foreign currencies by way of over drafts, cash credits, term loans, pre-shipment

credits, opening of letters of credit, issuing of guarantees including deferred payment guarantees and indemnities negotiations and discounting of demand and /or Usance bills and cheques inland as well as foreign and such other facilities as may be agreed upon from time to time between the bank and the borrower (hereinafter called the above mention facilities) for sums not exceeding in the aggregate the sum of Rs. 92.47 crores (hereinafter for the sake of brevity referred to as the principle sum) on the terms and conditions specified and contained therein.”

16. The submission made by the Appellant of novation of the contract and non-invocation of the subsequent guarantee dated 06.11.2020 is based on sanction letters dated 26.12.2019 and 09.09.2020 which according to the Appellant is sanction of further amount which amount has been claimed as a debt under Part IV and there being no invocation of guarantee dated 06.11.2020, application under Section 7 is not maintainable. 26.12.2019 is a sanction issued by the Central Bank of India to Principal Borrower with regard to Ad-hoc Limit of Rs.3.70 Crores for a period of 90 days. Letter dated 26.12.2019 contains following:-

“BR/AHMPOO/2019-20/1

Date: 26/12/2019

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

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

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

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

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

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

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

17. It is relevant to notice that sanction dated 26.12.2019 was Ad-hoc Limit where Clause 2 clearly mentions ‘**security- As applicable for existing FBWC limits**’.

18. The next sanction letter on which reliance is placed is sanction letter dated 09.09.2020 by which amount of Rs.3,16,90,762/- has been sanctioned under FITL Scheme. Sanction letter dated 09.09.2020 provides as follows:-

“SANCTION ADVISE TO THE BORROWER

**AHMEDNAGAR BRANCH OFFICE
NEAR LAXMIBAI KARANJA, AHMEDNAGAR, 414001.**

BR/AHMPOO/2020-21/FITL/01

Date: 09.09.2020

TO:

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

Dear Sir,

REG: SANCTION OF FITL

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

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

OTHER TERMS AND CONDITIONS-

1. *Any unpaid arrears of interest/Instalments/Charges pertaining to 01/03/2020, will be repaid before disbursement.*
2. *The instalments in the term loan falling due during the period from 01/*/* to 31/08/2020 in respect of Term Loan will be repaid by you as per the * repayment schedule by extending the tenor of the loan as allowed in the Regulation Package.*
3. *All necessary agreements on account of the above deferment of interest / allowing moratorium to be executed before disbursement of FITL.*
4. *All existing securities in the captioned facilities will continue to be the security for the existing facilities with the revised repayment schedule. Further the said securities will also cover the fresh FITL facility opened to park the interest on the captioned working capital facilities.*

(underlined by us)"

19. In the above sanction letter, clause 4 clearly mentions that all existing securities in the captioned facilities will continue to be the security for the existing facilities with the revised repayment schedule. It was further mentioned that the said securities will also cover the fresh FITL facility opened to part the interest on the captioned working capital facilities. Thus, the sanction letter dated 09.09.2020 was fully covered by existing securities which included the guarantees dated 22.08.2015 and 18.11.2016.

20. When we revert to Part-IV of the Section 7 Application, Cash Credit, Term Loan, FITL and Cash Credit Adhoc are the facilities for which with regard to amount disbursed default was claimed. Admittedly, for Cash

Credit and Term Loan, Guarantees dated 22.08.2015 and 18.11.2016 are very much covering the said Cash Credit, Term Loan and for sanction of Ad-hoc Cash Credit and FITL. Sanction letter as extracted above clearly indicate that the existing securities shall cover.

21. Counsel for the Appellant has much relied on guarantee deed dated 06.11.2020 which was guarantee deed executed with regard to Term Loan Facility aggregating to Rs.114.22 Crores. It is relevant to notice following extract of the corporate guarantee dated 06.11.2020:-

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

22. We have referred to Annexure-E which was facilities wise breakup. When we look into Annexure-E, it is clear that the amount disbursed with regard to term loan were disbursement to Principal Borrower till 24.02.2014 and amount disbursed under Cash Credit is from 2013 to 2023 whereas in

2022, it is only Rs.129.8 and in 2020, it is Rs.1,23,600/-. FITL was disbursed on 30.09.2020 and Cash Credit Adhoc disbursed on 26.12.2019. We have already noticed that the disbursement of FITL and Cash Credit Adhoc was fully covered by Cash Credit Facilities and Cash Credit were all covered by the earlier bank guarantees. 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.

24. In view of the above, we do not find any error in the order passed by the Adjudicating Authority admitting Section 7 application. There is no merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

New Delhi

Anjali