

(2025) 09 DEL CK 0722

In the Delhi High Court

Case No : Letters Patent Appeal No. 616 Of 2019

Consortium Of Worlds Window Exim Pvt Ltd & Ors

APPELLANT

Vs

Axis Bank Ltd & Ors

RESPONDENT

Date of Decision : 25-09-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 6 Rule 4
Insolvency and Bankruptcy Code, 2016 — Section 7, 9, 12A
Banking Regulation Act, 1949 — Section 35AA

Citation : (2025) 09 DEL CK 0722

Hon'ble Judges : Anil Kshetarpal, J; Harish Vaidyanathan Shankar, J

Bench : Division Bench

Advocate : Parag Tripathi, Krishnendu Datta, Abhishek Puri, Sahil Grewal, Surbhi Gupta, Mishika Bajpai, Yash Tandon, Amit Latawa, Sandeep Sethi, Vaijayant Paliwal, Charu Bansal, Samyukta Fauzdar, Akriti Sharma, Hashmat Nabi, Farah Naaz

Final Decision : Dismissed

Judgement

Anil Kshetarpal, J.

1. In substance, the issue before this Court is whether the revocation of the In-Principle Letter of Intent dated 17.08.2018 [hereinafter referred to as "IPLOI"], as amended by the Addendum dated 18.09.2018, and the subsequent invocation of an unconditional Bank Guarantee of Rs.100 crores by the Respondent No.1, was justified in view of the Appellants' alleged non-compliance with the terms of the IPLOI and the Request for Proposal [hereinafter referred to as "RFP"], and whether any actionable fraud or legal irregularity can be attributed to the Respondent No.1 in relation to the filing of an application under Section 7 of the Insolvency and Bankruptcy Code, 2016, before the NCLT, Kolkata.

2. The present Appeal under Clause 10 of the Letters Patent assails the correctness of judgment dated 16.09.2019 [hereinafter referred to as "Impugned Judgment"] passed by learned Single Judge in W.P.(C) 14068/2018 whereby the

learned Single Judge dismissed the writ petition filed by the Appellants challenging, inter alia, the letter dated 05.11.2018 issued by the Respondent No.1 purportedly cancelling the IPLOI, as amended by the addendum dated 18.09.2018 [hereinafter referred to as "Amended IPLOI"], issued in favour of the Appellant No.1; and further sought consequential reliefs, including a restraint on the invocation of an unconditional Bid Performance Guarantee [hereinafter referred to as "BPG"] or bank guarantee for Rs. 100 crores.

3. In order to comprehend the controversy involved in the present case, the relevant facts in brief are required to be noticed.

BRIEF FACTS & MATERIAL CHRONOLOGY

4. M/s Jhabua Power Limited ("JPL") is the owner-operator of a 600 MW coal-based thermal power plant in Madhya Pradesh. The Respondent Nos.1 to 12 ("the Lenders") are banks and financial institutions which had extended credit facilities to JPL. Pursuant to the default by JPL in repayment of its debts, the Lenders held pledged shares constituting approximately 60% of the paid-up equity of JPL as security for the debt. The Respondent No.13/KPMG India Private Ltd., acted as the Process Advisor to the Evaluation Committee constituted by the Lenders, assisting in the bid evaluation and overall due diligence process. The Respondent No.14/IndusInd Bank, was the issuing bank of the BPG furnished by the Appellants to secure their obligations under the transaction.

5. In order to divest the pledged shares and recover dues, the Lenders issued a RFP on 19.07.2018, inviting bids from eligible parties. The Appellants, as a consortium, submitted a bid and were declared the preferred bidder. Consequent to this, the Lenders issued an IPLOI in favour of the Appellant No.1 on 17.08.2018, which was subsequently amended by an Amended IPLOI to formalize certain amendments and provide clarity regarding completion of conditions precedent. A Bank Guarantee of Rs.100 crores was furnished by the Respondent No.14 in favour of the Lenders to secure performance under the transaction.

6. As per the terms of the RFP and IPLOI, the Appellant No.1 was required to adhere to a strict timeline, which envisaged execution of definitive agreements/documents of transfer of shares on or before 27.08.2018, in compliance with the Reserve Bank of India ("RBI") Guidelines on Revised Framework for Resolution of Stressed Assets dated 12.02.2018 [hereinafter referred to as "RBI Circular"]. The financial proposal submitted by the Appellant No.1 provided for payment of Rs.2,350 crores towards acquisition of 60% shareholding in JPL and full settlement of its debt. This process, including the issuance of the initial IPLOI, was undertaken in compliance with the RBI Circular, which emphasized time-bound resolution of stressed assets to minimize losses for lenders while affording the principal debtor a reasonable opportunity for revival.

7. On 25.08.2018, the Appellant No.1 was required to communicate acceptance of the IPLOI within three days. However, acceptance was communicated after

seven days, which was found non-compliant under Clause 2.7.2 of the RFP. Despite being informed by the lead Lender on 27.08.2018 that the acceptance letter was non-compliant, the Appellant No.1 failed to remedy the breach.

8. Pursuant to the RBI Circular and the non-compliance by the Appellant No.1, the lead Lender was constrained to file an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "IBC"] before the National Company Law Tribunal [hereinafter referred to as "NCLT"], Kolkata. FLSmith Pvt. Ltd. [hereinafter referred to as "FLS"] had earlier filed an application under Section 9 of the IBC for initiation of corporate insolvency resolution process against JPL on 22.11.2017.

9. Although the application under Section 7 of the IBC was filed, it was not admitted, allowing the lead Lender to withdraw the same. Despite multiple opportunities, the Appellant No.1 failed to comply with the terms of the RFP and IPLOI. Consequently, the lead Lender issued a termination letter dated 05.11.2018 cancelling the IPLOI and authorizing invocation of the unconditional BPG of Rs.100 crores.

10. On 19.11.2018, the Evaluation Committee provided an opportunity to the Appellant No.1 to explain why it was not in breach of the IPLOI. The Appellant No.1 pursued completion of the sale transaction but never raised any grievance regarding the filing of application under Section 7 or Section 9 of the IBC. Subsequent requests on 05.12.2018 to restore IPLOI similarly did not raise the Section 7 or Section 9 IBC issue. Thereafter, the application under Section 9 of the IBC by FLS was admitted on 27.03.2019, and the application under Section 7 of the IBC by the lead Lender was dismissed as infructuous on 09.03.2022. It was in these circumstances that the Writ Petition came to be filed.

11. While filing the Writ Petition before the learned Single Judge, the Appellants, besides alleging fraud, sought the following reliefs:

"(a) Issue an appropriate writ in the nature of a certiorari and/or any other appropriate writ/ order/ direction quashing the impugned Letter dtd. 05.11.2018 issued by Respondent No. 1 to the Petitioner No. 1 purportedly cancelling the "In principle Letter of Intent" issued in favour of the Petitioners;

(b) Issue an appropriate writ/ order/ direction restraining Respondent No. 1-13 to act in pursuance to the impugned Letter dtd. 05.11.2018 issued by Respondent No. 1 to the Petitioner No. 1.

(c) Issue an appropriate writ/order/direction restraining Respondents from taking any steps which would jeopardize or impede or prevent the acquisition of 60% of the shares in Jhabua Power Ltd.

(d) Issue an appropriate writ/ order/ direction restraining Respondent No. 1 to invoke Bank Guarantee No. OGT0005180024145 dated 06.09.2018 issued by Respondent No. 14 for an amount of Rs. 100,00,00,000/- (Rupees Hundred Crores Only) on behalf of Petitioner No. 2 in favour of Respondent No. 1 i.e. the

lead Bank.

(e) Issue an appropriate writ/order/direction calling for the entire record of Respondent nos. 1 -13 pertaining to the process for acquisition of controlling shareholding in Jhabua Power Ltd. including the records pertaining to consideration of the financial proposal submitted by the petitioners, cancellation of the IPLOI dated 17.08.2018, meeting held by the Evaluation Committee of the lenders on 19.11.2018 and any other subsequent meetings held by or between the Respondent nos. 1 - 12 in this regard.

(f) Issue an appropriate writ/order /direction calling for the entire record from Respondent No. 1 of CP (IB) No. 1291/KB/2018 filed by Respondent No. 1 before NCLT, Kolkata.”

12. Counter-affidavit(s)/Reply(ies) to the Writ Petition were filed, and after detailed consideration of facts, IPLOI/RFP provisions, communications, and the statutory framework, the learned Single Judge dismissed the writ petition by judgment dated 16.09.2019, which led to filing of the present Appeal.

13. As per the IPLOI and the Addendum, the Appellant No.1 was required to undertake the following actions by 15.10.2018:

- i. Furnish firm commitment letters from an Assets Reconstruction Company or other entities acceptable to the Lenders, evidencing availability of requisite funds for the transaction;
- ii. Provide an additional unconditional bank guarantee of Rs.10 crores to secure performance of obligations;
- iii. Execute definitive agreements formalizing the share transfer and other related obligations.

14. Despite repeated communications, reminders, and sufficient opportunities granted by the Lenders, the Appellant No.1 failed to comply with any of the aforementioned conditions. Further, the IPLOI stipulated that within 90 days of execution of the definitive agreements, the Appellant No.1 was required to pay the entire consideration amounting to Rs.2,350 crores, i.e., by 13.01.2019. The Appellant No.1 failed even to demonstrate definitive sources of funds to meet this obligation. In view of such non-compliance, and after giving ample opportunity to remedy the breach, the Lenders were compelled to recall/revoke the IPLOI and proceed in accordance with the contractual and RFP provisions, including authorization to invoke the unconditional BPG.

CONTENTIONS OF THE APPELLANTS

15. The Appellants, through learned senior counsel, submitted at length that the Impugned Judgment of the learned Single Judge was liable to be set aside. Apart from making elaborate oral submissions, the Appellants filed a written note on 17.09.2025, which supplemented their contentions. The primary grievance advanced by the Appellants was that a fraud was perpetrated upon them. It was

submitted that while the Respondent No.1 was negotiating with the Appellants and inducing them to furnish a BPG of Rs.100 crores, simultaneously, an application under Section 7 of IBC was filed before the NCLT, Kolkata. The Appellants contended that the filing of the said application created a situation where they were misled into committing to substantial financial obligations while the Respondent No.1 pursued insolvency proceedings, which constituted an actionable fraud.

16. Learned senior counsel further submitted that as per the RBI Circular, the Respondent No.1 was required to file the application on 11.09.2018, being the last permissible date for filing. It was contended that the filing of the application under Section 7 of the IBC had a material effect on the transaction under the IPLOI and, therefore, the Appellants were misled into acting at their own detriment. It was argued that the Respondent No.1's conduct amounted to an unfair play, rendering the revocation of the IPLOI and invocation of the bank guarantee unjust and contrary to law.

17. In addition, reliance was placed on the judgment of the Supreme Court in Dharani Sugars and Chemicals Ltd. v. Union of India (2019) 5 SCC 480, wherein the revised framework circular dated 12.02.2018 issued by the RBI was held to be ultra vires. Learned senior counsel argued that, therefore, actions taken pursuant to such circulars, including revocation of IPLOI and invocation of bank guarantees, were invalid. It was further submitted that the Lenders' in-house resolution process, including transfer of debt and disposal of shares, could only be undertaken under the statutory framework of the IBC or in accordance with the RBI Circular, which had been subsequently quashed.

18. It was also contended that definitive agreements could not be executed without a final LOI, and the revocation of the IPLOI prior to fulfilment of these requirements was legally impermissible. It was additionally submitted that the Appellants had made arrangements to fund the transaction and were ready to execute the remaining steps, but Respondent No.1's unilateral actions frustrated the completion of the transaction.

19. Lastly, it was argued that some of the other Lenders were willing to extend time, yet the IPLOI was terminated and the bank guarantee invoked unilaterally, causing irreparable prejudice to the Appellants.

CONTENTIONS OF THE RESPONDENTS

20. Per contra, learned senior counsel for the Respondent Nos.1 and 2 strongly contested all contentions of the Appellants. It was submitted that the application filed under Section 7 of the IBC by the Respondent No.1, in its capacity as creditor of the Borrower, was not admitted by the NCLT, Kolkata, and was ultimately rendered infructuous as a consequence of the prior admission of an application under Section 9 of the IBC filed by FLS. Therefore, no fraud was played on the Appellants, and the filing of the application under Section 7 of the IBC did not affect the conclusion of the transaction contemplated under the IPLOI.

21. Learned senior counsel emphasized that Rule 8 of the IBC permits withdrawal of any application filed under Section 7 of the IBC prior to its admission and, even post-admission, withdrawal is permissible under Section 12A of the IBC with approval of the majority of lenders. Consequently, the application under Section 7 of the IBC was irrelevant to the performance of the obligations under the IPLOI by the Appellants.

22. It was further submitted that the Appellants had failed to provide full particulars of fraud in accordance with Order VI Rule 4 of the Code of Civil Procedure, 1908, [hereinafter referred to as "CPC"] and had not led cogent evidence to substantiate their claims and therefore, the learned Single Judge correctly held that the Appellants failed to establish the alleged fraud. Learned counsel submitted that disputed questions of fact are not to be decided in writ proceedings and that the Appellants' allegations of malfeasance were therefore unsustainable.

23. With regard to reliance on the case of Dharani Sugars (supra), the learned senior counsel for the Respondent Nos.1 and 2 pointed out that the IPLOI was revoked on 05.11.2018, while the Supreme Court's judgment was delivered on 02.04.2019. The proceedings had already taken place in accordance with the RBI Circular at the relevant time, and the circular's subsequent invalidation could not retroactively impact the lenders' actions. Further, it was contended that the lenders' invitation for expressions of interest for change of ownership and management control of the Borrower by transfer of majority shares was entirely lawful and did not require statutory or regulatory authority. The Supreme Court in Dharani Sugars (supra) had recognized that the RBI Circular amounted to excessive control, which was not envisaged under the Banking Regulation Act, 1949, and therefore its absence did not render the lenders' actions illegal.

24. The Respondents emphasized that the RFP and IPLOI were contractual instruments intended to regulate the transaction. The Appellants were required to fulfil obligations under a seven-step process, which included furnishing additional bank guarantees, demonstrating funding arrangements, and executing definitive agreements. The Appellants had failed to complete the required steps, and therefore, the revocation of IPLOI and invocation of the bank guarantee were justified. Clause 11 of the IPLOI explicitly provided the lenders the right to terminate the transaction and invoke the bank guarantee in case of non-compliance, and the Addendum clarified that the bank guarantee would only be returned if the process was cancelled through no fault of the Appellants.

25. Lastly, it was submitted that invocation of the bank guarantee is independent of execution of definitive agreements, is irrevocable and unconditional, and enforceable on first demand. The Appellants had offered to pay approximately Rs.2,350 crores but failed to make the necessary arrangements, proving non-compliance with the IPLOI terms. The unanimous decision of the Evaluation Committee on 18.01.2019 further validated the lenders' lawful termination of the transaction.

ANALYSIS & FINDINGS

26. This Court has carefully considered the submissions of learned senior counsel for the parties, examined the written note filed on 17.09.2025, and perused the paperbook along with the record of the learned Single Judge.

27. The primary contention of the learned senior counsel for the Appellants was that a fraud had allegedly been played upon them, inasmuch as while the Respondent No.1 was negotiating with the Appellants and had induced them to furnish a BPG of Rs.100 crores, an application under Section 7 of the IBC was filed before the NCLT, Kolkata. This Court observes that, as per the RBI Circular dated 12.02.2018, the Respondent No.1 was required to file the application by 11.09.2018, which was the last permissible date for such filing. Further, the filing of such an application did not in any manner prevent the conclusion of the transaction with the Appellants. Rule 8 of the IBC expressly permits any applicant to withdraw an application filed under Section 7 of the IBC before its admission.

28. In the present case, the application under Section 7 of the IBC filed by the Respondent No.1, in its capacity as creditor of the Borrower, was not admitted by the NCLT, Kolkata till the date the IPLOI was revoked. In fact, the application was never admitted in view of the fact that an application under Section 9 of the IBC had already been filed by FLS, which was admitted by the NCLT, Kolkata. Accordingly, the application under Section 7 of the IBC filed by the Respondent No.1 was ultimately dismissed as infructuous. Hence, this Court finds that no fraud can be attributed to the Respondent No.1. It is also noted that a party alleging fraud is required to specifically plead and strictly prove the same by leading cogent evidence.

29. It is well settled that fraud must be specifically pleaded and strictly proved. Order VI Rule 4 of the CPC, in that reference, reads as under –

4. Particulars to be given where necessary.—In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

Order VI Rule 4 of the CPC requires that full particulars of fraud be incorporated in the petition and proved by leading cogent evidence. While deciding a writ petition, the Court is not expected to decide disputed questions of fact. The learned Single Judge has held that the Appellants have failed to substantiate their allegations of fraud. This Court concurs with this finding and does not find any reason to interfere.

30. The argument based upon the judgment of the Supreme Court in *Dharani Sugars* (supra), which struck down the revised framework circular dated 12.02.2018 issued by the RBI, lacks substance because the said judgment

declared the Circular to be ultra vires Section 35AA of the Banking Regulation Act, 1949, and consequently rendered all actions taken solely pursuant to the Circular, including initiation of proceedings under Section 7 of the IBC, to be non-est. In the present case, however, the revocation of the IPLOI on 05.11.2018 was not an action traceable to the Circular, but a contractual step taken by the lenders in exercise of their commercial wisdom. Therefore, the judgment in Dharani Sugars (supra) does not advance the case of the Appellants.

31. It is also evident that the finding of the learned Single Judge that the Appellants failed to take timely steps to fulfil their commitments has not been challenged. The correctness of the finding that the Appellants defaulted in making arrangements as per the IPLOI and its Addendum has also not been disputed.

32. Another contention relates to the competence of the in-house resolution process by transfer of debt. On the argument of the Appellant that this could only be effected either under the RBI Circular, which was later quashed by the Supreme Court, or under the IBC, this Court notes that the lenders invited expressions of interest for change of ownership and management control by offering to transfer majority shareholding. Such a step does not require any statutory framework or RBI Circular. As held in Dharani Sugars (supra), the RBI Circular was ultra vires the Banking Regulation Act, 1949, and represented excessive control not envisaged under the Act. Consequently, the step taken by the lenders to dispose of shares dehors the Circular cannot be faulted. Rather, the lenders' actions were in furtherance of their commercial wisdom which is not amenable to judicial review in writ jurisdiction.

33. This Court observes that the RFP and IPLOI were steps towards a contractual arrangement between the parties in the ordinary course of business. There is no evidence that the Respondent No.1 acted unfairly in any manner.

34. The next contention that the application under Section 7 of the IBC filed by the Respondent No.1 could have been withdrawn also lacks merit. This Court observes that such contention is an afterthought and is unsubstantiated, as FLS had already filed an application under Section 9 of the IBC, which was admitted. Rule 8 of the IBC permits withdrawal of applications under Section 7 of the IBC prior to admission. Even after admission, Section 12A of the IBC allows withdrawal with approval from the majority of lenders. Therefore, filing of the application under Section 7 of the IBC did not impede the completion of the transaction.

35. The Appellants' argument that definitive agreements could not be executed without the final LOI is also without merit. The RFP expressly contemplates a seven-step process. With issuance of the IPLOI, the Appellants only cleared the first three stages. Subsequent obligations, including furnishing additional bank guarantees, executing definitive agreements, and consummating the transaction, were not fulfilled by the Appellants.

36. This Court further notes that it is not proved that the Respondent No.1 kept changing the goalposts regarding tie-up of funds. The Appellants had offered to pay approximately Rs.2,350 crores. They were required to make arrangements and provide proof of steps taken in this regard but failed to do so. Mere expression of willingness to pay, without demonstrable arrangements, cannot substitute actual compliance with the terms of the IPLOI.

37. Clause 11 of the IPLOI explicitly provides that the lender reserves the right to terminate the transaction and invoke the bank guarantee in the event the Appellants are unable to comply with the stipulated conditions. The terms of the IPLOI also provide that, in case of any discrepancy between the RFP and IPLOI, the IPLOI shall prevail. The Addendum further clarifies that the bank guarantee shall be returned only if the process is cancelled by the lenders for reasons not attributable to the Appellants. In the present case, the Appellants committed default and are therefore not entitled to any refund.

38. The contention regarding the wish of other lenders to extend time is also misplaced. The Minutes of the Evaluation Committee meeting dated 18.01.2019 demonstrate a unanimous decision to terminate the IPLOI and sale transaction. This decision reflects the collective will of all lenders.

39. Insofar as the challenge to invocation of the BPG is concerned, it is settled law that the Court cannot restrain invocation of an unconditional bank guarantee except in cases of egregious fraud or irretrievable injustice, neither of which is established here. The invocation of the unconditional bank guarantee is not dependent upon signing of the definitive agreements. A bank guarantee constitutes an independent contract between the guarantor bank and the beneficiary. It is irrevocable and unconditional, and payment is required to be made on the first demand, without condition, restriction, or further proof.

CONCLUSION

40. Keeping in view the above discussion and analysis, the Court finds that the Appellants have failed to establish any valid ground for interference. The Impugned Judgment passed by the learned Single Judge is therefore upheld in its entirety.

41. The present Appeal is accordingly dismissed with costs in the sum of Rs.10,00,000/- (Rupees Ten Lakhs) payable by the Appellants directly to the ? Poor Patients Fund under the aegis of AIIMS, New Delhi'. The proof of payment of costs shall be filed within two weeks.