

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1694 of 2024 &
I.A. No. 6184, 6185 of 2024

IN THE MATTER OF:

Shrinathji Spintex Pvt. Ltd.

Through its Authorized Representative:

Jatinbhai Dhirajbhai Lakkad

Having registered office at:

Gundala Road, Survey No. 461, Near Khedut Solvant,
Behind Gujarat Ginning, Gonal, Gujarat- 360311

...Appellant

Versus

1.Shantilal Parbatbhai Lakkad

Personal Guarantor of M/s Sunrise Ginning

Having address at: Lakkad Fali, Mekhatimbi,
Rajkot, Mekha Timbi, Gujarat- 360470.

...Respondent No.1

2.State Bank of India

Stressed Assets Management Branch,

Paramsiddhi Complex, 2nd Floor, Opposite V.S. Hospital,
Ellisbridge, Ahmedabad, Gujarat- 380006

...Respondent No.2

3.Mr. Rajendra Jain

Having office at: A-1103, Iscon Riverside,

Nr. Dafnala, Opp. Police Station,

Nr. Shilalekh, Shahibaug, Ahmedabad, Gujarat- 380004

...Respondent No.3

Present:

For Appellant: Mr. Gaurav Mitra, Mr. Himanshu Chaubey,
Mr. Siddharth Garg, Mr. Srijan Sinha, Lihzu Shinye
Konyak, Mr. Srajan Yadav, Ms. Lavanya Pathak, Advts.

For Respondents: Mr. Harshit Khare, Mr. Prafful Saini, Mr. Suraj Anand,
Mr. Deepankar, Advocates for SBI.

With

Company Appeal (AT) (Ins) No. 1837 of 2024 &
I.A. No. 6736, 6737, 6738 of 2024

IN THE MATTER OF:

Cont'd..../

Rajendra Jain

Having office at: A-1103, Iscon Riverside,
Nr. Dafnala, Opp. Police Station, Nr. Shilalekh,
Shahibaug, Ahmedabad, Gujarat- 380004

...Appellant

Versus

1.Shantilal Parbatbhai Lakkad

Personal Guarantor of M/s Sunrise Ginning
Having address at: Lakkad Fali, Mekhatimbi,
Rajkot, Mekha Timbi, Gujarat- 360470

...Respondent No.1

2. Shrinath Ji Spintex Private Limited

Through its Authorized Representative:
Jatinbhai Dhirajbhai Lakkad
Having registered office at:
Gundala Road, Survey No. 461, Near Khedut Solvant,
Behind Gujarat Ginning, Gonal, Gujarat- 360311

...Respondent No.2

3.State Bank of India

Stressed Assets Management Branch,
Paramsiddhi Complex, 2nd Floor, Opposite V.S. Hospital,
Ellisbridge, Ahmedabad, Gujarat- 380006

...Respondent No.3

Present:

For Appellant: Mr. Sandeep Bajaj, Mr. Mayank Biyani, Mr. Parijat Singh, Advocates.

For Respondents: Mr. Prafful Saini, Mr. Suraj Anand, Mr. Deepankar, Advocates for SBI.

With

**Company Appeal (AT) (Ins) No. 1838 of 2024 &
I.A. No. 6739, 6740, 6741 of 2024**

IN THE MATTER OF:

Rajendra Jain

Having office at: A-1103,
Iscon Riverside, Nr. Dafnala, Opp. Police Station,
Nr. Shilalekh, Shahibaug, Ahmedabad, Gujarat- 380004

...Appellant

Versus

1.Hemantbhai Parbatbhai Lakkad

Personal Guarantor of M/s Sunrise Ginning Navin Nagar,
Block No. 20, Near JIaram 2, University Road, Rajkot,
Rajkot – Raiya Road, Gujarat – 360007

...Respondent No.1

2. Shrinath Ji Spintex Private Limited

Through its Authorized Representative:

Jatinbhai Dhirajbhai Lakkad

Having registered office at: Gundala Road, Survey No.
461, Near Khedut Solvant, Behind Gujarat Ginning,
Gonal, Gujarat- 360311

...Respondent No.2

3. State Bank of India

Stressed Assets Management Branch,
Paramsiddhi Complex, 2nd Floor,
Opposite V.S. Hospital, Ellisbridge,
Ahmedabad, Gujarat- 380006

...Respondent No.3

Present:

For Appellant: Mr. Sandeep Bajaj, Mr. Mayank Biyani, Mr. Parijat Singh, Advocates.

For Respondents: Mr. Prafful Saini, Mr. Suraj Anand, Mr. Deepankar, Advocates for SBI.

J U D G M E N T
(13th May, 2025)

INDEVAR PANDEY, MEMBER (T)

The Company Appeal (AT) (Ins.) No. 1694 of 2024 has been filed under Section 61(1) of the Insolvency and Bankruptcy Code, 2016, challenging the order dated 31.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench), in CP (IB) No. 26 (AHM) of 2023. The **appellant, Shrinathji Spintex Private Limited**, had filed the application under Section 95 of the Code to initiate insolvency resolution proceedings against **Respondent No. 1/Mr. Shantilal Parbatbhai Lakkad**, the personal guarantor of **M/s Sunrise Ginning Private Limited**, the **corporate debtor**. The State Bank of India is the Respondent No.2 in this case and Sh. Rajendra Jain, Resolution Professional (RP) is the Respondent No.3.

2. The Adjudicating Authority (hereinafter referred to as AA) dismissed the application on the ground that no written contract of guarantee existed. The appellant contends that a valid guarantee was provided orally and formalized by a consent decree signed by Respondent No. 1.

3. This Company Appeal (AT) (Ins.) No. 1694 of 2024 is connected with two other appeals viz. Company Appeal (AT) (Ins.) No. 1837 of 2024 and Company Appeal (AT) (Ins.) No. 1838 of 2024 filed by the Resolution Professional.

4. The facts and background in all three cases are substantially similar, as they relate to the same Corporate Debtor M/s Sunrise Ginning Private Limited, the same underlying debt, and a common Consent Decree dated **05.03.2020** passed by the Principal Civil Judge, Rajkot, in **Special Civil Suit No. 02 of 2020**. In two cases, they arise from the same impugned order while in CA (AT) (Ins.) No. 1838 of 2024 they arise from a different impugned order which is based on the same facts, only the Personal Guarantor is different in that case.

5. However, since these appeals involve different personal guarantors and independent applications, the facts relevant to each case have been separately set out below for clarity and completeness.

Company Appeal (AT) (Ins.) No. 1694 of 2024:

6. The brief facts of the case are given below:

- (i) Shrinathji Spintex Private Limited/Appellant is a private company incorporated under the Companies Act, 1956. It is engaged in the

manufacturing and supply of cotton bales. The company is registered in Gondal, Gujarat.

(ii) M/s Sunrise Ginning Private Limited, the corporate debtor, is also a private company involved in textile spinning and weaving. It is registered in Dhoraji, Gujarat. The directors of both companies are closely related, and both businesses are family-run.

(iii) Between April and July 2015, the appellant supplied cotton bales worth Rs.3,44,98,716/- to the corporate debtor under an oral agreement. The goods were supplied through multiple invoices, which were accepted without objection. These invoices include:

- Invoice No. B/T-25 dated 16.06.2015 for INR 16,79,645.
- Invoice No. B/T-26 dated 18.06.2015 for INR 16,72,947.
- Invoice No. B/T-27 dated 18.06.2015 for INR 50,88,399.
- Invoice No. B/T-28 dated 20.06.2015 for INR 51,00,765.
- Invoice No. B/T-29 dated 20.06.2015 for INR 50,32,754.

(Additional invoices continue through 05.07.2015, totaling Rs.3,44,98,716/-)

(iv) Despite several reminders, the corporate debtor failed to pay the outstanding dues. The debt was acknowledged in the corporate debtor's financial records for the financial year 2016-17, confirming its liability to the appellant.

(v) On 02.01.2020, the appellant filed Special Civil Suit No. 02 of 2020 before the Principal Civil Judge, Rajkot, seeking recovery of the dues and an injunction to restrain Respondent No. 1 and other guarantors from disposing of their assets.

(vi) A consent decree was passed on 05.03.2020, signed by Respondent No. 1. The decree obligated the corporate debtor and Respondent No. 1 to pay INR 5,77,85,361, including interest, to the appellant. The decree also created a hypothecation on specific immovable properties owned by Respondent No. 1, including:

- Land at Jamnagar with R.S. No. 1115 and 1116, plots 8, 10–14, and others, admeasuring 3,112.49 sq. mt.
- Land at Jamnagar R.S. No. 1114 (Paiki 2), plots 78 and 79, totaling 304.55 sq. mt.
- Land at Moje-Manavdar, Taluka Manavdar, District Junagadh, R.S. No. 5, plot 2, admeasuring 181.155 sq. mt.

(vii) The consent decree remained unfulfilled, and no payments were made. On 10.11.2022, the appellant issued a demand notice in Form B under Rule 7(1) of the Insolvency and Bankruptcy Rules, 2019, to Respondent No. 1/ Mr. Shantilal Parbatbhai Lakkad. The notice sought payment of Rs.5,77,85,361/- but it elicited no response from Respondent No.1.

(viii) On 13.12.2022, the appellant filed an application under Section 95 of the Code before the National Company Law Tribunal, Ahmedabad Bench, to

initiate insolvency resolution proceedings against Respondent No. 1 as the personal guarantor. This was registered as CP (IB) No. 26 (AHM) of 2023.

(ix) By an order dated 01.02.2023, the Adjudicating Authority appointed Mr. Rajendra Jain (Respondent No. 3) as the Resolution Professional. After examining the claims, Respondent No. 3 filed a report under Section 99 of the Code on 22.02.2023, recommending admission of the application.

(x) While the proceedings were pending before AA, the **State Bank of India**/Respondent No. 2 filed an intervention petition under Section 60(5) of the Code, citing its financial interest in the case and seeking to be included in the proceedings, which was allowed by AA.

(xi) On 31.07.2024, the Adjudicating Authority dismissed the appellant's application under Section 95 of the Code. The Authority held that the absence of a written guarantee invalidated the claim, and characterized the application as an attempt to execute the civil court decree by initiating insolvency proceedings.

(xii) In this appeal, the appellant argues that the Adjudicating Authority failed to consider the permissibility of oral and implied guarantees under Section 126 of the Indian Contract Act, 1872. The appellant further contends that the consent decree signed by Respondent No. 1 unequivocally establishes his liability as a guarantor.

7. The Appellant, *Shrinathji Spintex Pvt. Ltd.*, has prayed for the setting aside of the Impugned Order dated 31.07.2024 passed by the NCLT, Ahmedabad, which dismissed its application under Section 95 of the Insolvency and Bankruptcy Code, 2016 against *Shantilal Parbatbhai Lakkad* (Respondent No.1). The Appellant seeks revival of the application by asserting that an oral contract of guarantee existed, supported by the Consent Decree dated 05.03.2020 signed by the Respondent, and that the Adjudicating Authority failed to appreciate that a guarantee can be oral as per Section 126 of the Indian Contract Act.

Company Appeal (AT) (Ins.) No. 1837 of 2024

8. This appeal also assails the order passed by AA in CP (IB) No. 26 (AHM) of 2023. The appeal has been filed by Mr. Rajendra Jain, who is the Resolution Professional in CP (IB) No. 26 (AHM) of 2023, challenging the order dated 31.07.2024, passed by the NCLT, Ahmedabad Bench. The appeal involves **Mr. Shantilal Parbatbhai Lakkad (R1/ Personal Guarantor)**, along with **Shrinath Ji Spintex Private Limited (R2/ applicant seeking insolvency proceedings)**, and **State Bank of India (R3/secured financial creditor)**.

9. Apart from what has been stated in the facts related to Company Appeal (AT) (Ins.) No. 1694 of 2024, certain additional facts are given below:

- i. On **01.02.2023**, the NCLT appointed **Mr. Rajendra Jain** (Appellant) as the Resolution Professional (RP) under **Section 97 of the IBC**, directing him to submit a report under **Section 99** within 10 days.

- ii. On **08.02.2023**, the Appellant wrote to both Respondent No. 1 and Respondent No. 2 requesting documents and information relating to the debt, including proof of payment, list of assets, and financial details. However, no response was received from Respondent No. 1.
- iii. In the absence of cooperation, and relying on the Consent Decree and other records, the Appellant submitted his Section 99 Report on 22.02.2023, recommending admission of the Section 95 application.
- iv. On 31.07.2024, the AA dismissed the Section 95 application, observing that the RP had not verified the facts properly. The tribunal imposed a penalty of Rs. 1,00,000 on the Appellant and directed that his name be referred to the IBBI for further action.
- v. The Appellant, aggrieved by these adverse remarks and penalty, filed the present appeal on 12.09.2024 under Section 61 of the IBC.

10. The Tribunal, in its orders dated 31.07.2024, noted that the appellant sought to initiate insolvency proceedings against the guarantors despite the absence of a formal written guarantee agreement. It observed that the reliance on a consent decree, instead of a distinct contractual guarantee, raised questions on whether the appellant could be treated as a financial creditor under the IBC. The Tribunal further commented that the personal insolvency framework under Section 95 must be applied strictly to cases where a valid, enforceable guarantee exists, and in the absence of such evidence, the proceedings against the guarantors were liable to be dismissed. Relevant portion of the NCLT order has been extracted below:

“16. In view of the above we pass the following order:-

ORDER

I. CP(IB) 26 of 2023 is dismissed and Intv. Petition 10 of 2024 is disposed off.

II. The applicant and RP are directed to pay a penalty of Rs. 1 Lakh each to the Prime Minister's Relief Fund. The Registry is directed to refer the name of the RP Mr. Rajendra Jain to the IBBI to take appropriate action for filling this application which is not in consonance with the provision IBC, for filing report recommending Insolvency without proper examination of facts and documents and for not doing duties diligently.”

11. The Appellant, *Rajendra Jain* (Resolution Professional), seeks expungement, modification, or deletion of the adverse remarks and penalty of Rs.1 lakh imposed upon him in the Impugned Order dated 31.07.2024 passed by the NCLT, Ahmedabad in CP (IB) No. 26 (AHM) of 2023. He further prays for setting aside the directions referring his name to the IBBI for alleged dereliction of duty. The Appellant contends that the recommendations were made in good faith based on the record and that penalizing him for a legal interpretation is unjustified.

Company Appeal (AT) (Ins.) No. 1838 of 2024

12. This appeal arises from the order passed by Ld. AA in the CP (IB) No. 25 (AHM) of 2023 in which Mr. Hemantbhai Parbatbhai Lakkad is the Personal Guarantor of the same CD viz. Sunrise Ginning Private Limited.

13. In this case, Mr. Rajendra Jain (appellant/ Resolution Professional) has challenged the order dated 31.07.2024, passed in **CP (IB) No. 25 (AHM) of 2023**.

This case involves **Mr. Hemantbhai Parbatbhai Lakkad (R1/** another personal guarantor of Corporate Debtor M/s Sunrise Ginning Private Limited), **Shrinathji Spintex Private Limited (R2/** applicant seeking insolvency proceedings), and **State Bank of India (R3/**secured financial creditor).

14. The facts in *Company Appeal (AT)(Insolvency) No. 1838 of 2024* are the same as those in *Appeal No. 1837 of 2024*, except that they involve a different personal guarantor. Since both appeals arise from similar proceedings, orders, and allegations against the same Resolution Professional, the same shall be read as part of the record for both matters. Relevant para 16 of CP (IB) No. 25 (AHM) of 2023 is extracted below:

“16. In view of the above we pass the following order:-

ORDER

I. CP(IB) 25 of 2023 is dismissed and IA 238 of 2023 is disposed off.

II. The applicant and RP are directed to pay a penalty of Rs. 1 Lakh each to the Prime Minister's Relief Fund. The Registry is directed to refer the name of the RP Mr. Rajendra Jain to the IBBI to take appropriate action for filling this application which is not in consonance with the provision IBC, for filing report recommending Insolvency without proper examination of facts and documents and for not doing duties diligently.”

15. The Appellant in this proceedings, Mr. Rajendra Jain who is the RP in this matter also, seeks the same relief as in case of the previous Company Appeal (AT) (Ins.) No. 1837 of 2024, viz. expungement or setting aside of the adverse remarks, Rs.1 lakh penalty, and reference to IBBI, as made in the Impugned

Order dated 31.07.2024 in CP (IB) No. 25 (AHM) of 2023. The Appellant argues that he only acted upon the orders of the NCLT to submit a report under Section 99 and made his recommendation based on available documents, including a consent decree.

16. It is clear from the position stated above that the three appeals before this Tribunal are closely connected and arise out of the same set of factual matrix. Since the legal and factual issues and prayer involved are largely overlapping, we find it appropriate to first consider *Company Appeal (AT)(Insolvency) No. 1694 of 2024* as the main matter. The findings in this appeal would cover most of the questions raised in the other two appeals. Additional issues relating to *Company Appeal (AT)(Insolvency) Nos. 1837 and 1838 of 2024*, they shall be examined and addressed separately.

Written submissions on behalf of the Appellant (Shrinathji Spintex Private Limited):

17. Ld. counsel for the appellant submits that the present appeal is filed seeking to set aside the order dated 31.07.2024, passed by the National Company Law Tribunal, Ahmedabad Bench, in C.P. (IB) 26 (AHM) 2023. The said order dismissed the appellant's application under Section 95 of the Insolvency and Bankruptcy Code (IBC) to initiate insolvency resolution proceedings (IRP) against Mr. Shantilal Parbatbhai Lakkad/ Respondent No. 1, the personal guarantor for M/s Sunrise Ginning Private Limited, the corporate debtor. The appellant prays for allowing the appeal and setting aside the impugned order.

18. The counsel for the appellant submits that the NCLT erred in its interpretation of Section 95 of the IBC by holding that only a financial creditor can apply for initiating IRP under the said section. Section 95 permits any "creditor" to file such an application. Furthermore, Section 3(10) of the IBC defines a "creditor" to include a decree holder.

19. The counsel places reliance on the judgment of this Tribunal in '*Ashok Agarwal v. Amitex Polymers Pvt Ltd., 2021 SCC OnLine NCLAT 49*', wherein this Tribunal clarified that a decree holder falls within the ambit of the term "creditor" under Section 95 of the IBC.

20. The counsel submits that the Consent Decree, forms a valid contract of Guarantee. In this case, the appellant and the corporate debtor were engaged in business transactions involving the sale and purchase of cotton bales in 2015. The appellant raised invoices during this period, which remained unpaid.

21. The counsel further submits that due to non-payment, the appellant filed Special Civil Suit No. 02 of 2020 before the Principal Civil Judge, Rajkot. On 05.03.2020, a consent decree was executed between the appellant and Respondent No. 1. The decree recorded the assurance of Respondent No. 1, among others, to pay the appellant's legal dues with interest and to refrain from transferring or encumbering their properties until the dues were settled.

22. The counsel further states that under Section 5(22) of the IBC, a personal guarantor is defined as an individual who acts as a surety in a contract of guarantee for a corporate debtor. Section 126 of the Indian Contract Act, 1872, allows contracts of guarantee to be either oral or written. Thus, the NCLT erred

in holding that the consent decree dated 05.03.2020 does not constitute a valid contract of guarantee.

23. Ld. Counsel for the appellant places reliance on the following cases in support of his contention: -

- (i) *P. J. Rajappan v. Associated Industries Pvt. Ltd.*, 1989 SCC OnLine Ker 312 (@Para 4, 5);
- (ii) *Mir Niyamath Ali Khan v. Commercial and Industrial Bank Ltd.*, 1967 SCC OnLine AP 48 (@Para 18); and
- (iii) *Mathura Das & Ors. v. Secretary of State and Anr.*, 1930 SCC OnLine All 208 (@Para 5, 6).

24. Ld. Counsel further cites the Judgment of Hon'ble Supreme Court in *Pushpa Devi Bhagat v. Rajinder Singh*, (2006) 5 SCC 566, which held that a consent decree is effectively a contract between the parties, sanctioned by the court. Therefore, the consent decree dated 05.03.2020 constitutes a valid contract of guarantee between the appellant and Respondent No. 1.

25. The counsel argues that fraud allegations do not vitiate the Consent Decree. Herein, Respondent No. 2's allegations of fraud in obtaining the consent decree lack merit. A consent decree can only be set aside by the court that recorded it, as held in *R. Rajanna v. S.R. Venkataswamy and Ors.*, (2014) 15 SCC 471 (@Para 11); *Banwari Lal v. Chando Devi*, (1993) 1 SCC 581 (@Para 7); and *Pushpa Devi Bhagat v. Rajinder Singh* (@Para 17).

26. The Ld. Counsel argues that the Respondent No. 2/SBI has not approached the Principal Civil Judge, Rajkot, to challenge the decree. Therefore,

the allegations of fraud cannot be entertained by this Appellate Tribunal. He further stated that the Hon'ble Supreme Court in *Union of India v. M/s Chaturbhai M. Patel*, (1976) 1 SCC 747, held that allegations of fraud must be established beyond reasonable doubt and cannot be presumed based on suspicion alone.

27. The counsel submits that default occurred on the date of the Consent Decree. The liability of a guarantor crystallized on 05.03.2020, the date of the consent decree, as it explicitly recorded the obligation to pay "as soon as possible." This does not require invocation of the guarantee. In this regard, the counsel placed reliance on Hon'ble SC's decision in *Syndicate Bank v. Channaveerappa*, (2006) 11 SCC 506, and the decision of this Tribunal in *Pooja Ramesh Singh v. State Bank of India*, Company Appeal (AT) (Ins) No. 329 of 2023, which held that the liability of a guarantor can arise automatically based on the terms of the guarantee.

28. The counsel for the appellant further submitted that the date of default, therefore, is correctly recorded as 05.03.2020, as also relied upon by the NCLT in initiating CIRP against the corporate debtor in *Shrinathji Spintex Pvt. Ltd. v. Sunrise Ginning Pvt. Ltd.*, CP (IB) 314 (AHM) 2022.

29. Ld. Counsel has submitted that the Respondent No. 2 had no locus standi to object to the initiation of insolvency proceedings under Section 95 of IBC, as it is an admitted fact that no contractual relationship exists between the Appellant and Respondent. The IBC does not allow third-party objections to such proceedings, which can be initiated by a single creditor. Accepting such

objections would prioritize one creditor's claim over another, undermining the legal process. Respondent No. 2's objections are baseless, as they do not affect its rights during the insolvency process, while denying the Appellant its legitimate remedy. It is also relevant to point out that Respondent No. 2 holds the position of a secured creditor, thereby entitling it to preferential treatment in payments over the Appellant, who will only be categorized as an operational creditor, during the personal insolvency process of Respondent No. 1.

30. Summing up his arguments Ld. Counsel prayed for quashing of the impugned order dated 31.07.2024 passed by Ld. AA and initiation of CIRP against Respondent No.1.

Submissions on Behalf of Respondent No. 2/ State Bank of India

31. Ld. Counsel for the respondent submits that the principle of “Fraud Vitiates Every Solemn Act” applies to the transaction among the appellant, the corporate debtor, and Respondent No. 1. It is contended that the consent decree dated 05.03.2020 was obtained solely to file the Section 95 petition and obstruct enforcement actions taken by Respondent No. 2 (SBI) against Respondent No. 1. Various circumstances demonstrate fraudulent intent, including the fact that the corporate debtor was admitted into CIRP by the NCLT on 20.11.2019, leading to the imposition of a moratorium under Section 14 of the IBC. Despite this, the appellant initiated Civil Suit No. 02 of 2020 on 02.01.2020, without informing the civil court about the moratorium.

32. The respondent further highlights that the consent decree was obtained during the CIRP period while the moratorium was still in effect. Additionally, the

last invoice raised by the appellant was due on 05.07.2015, and even assuming an acknowledgment of liability in the corporate debtor's balance sheet for FY 2015-16, the limitation period would have expired by March 2019, making the civil suit time-barred. Furthermore, Respondent No. 1's properties had been mortgaged with SBI in 2011 and 2013, and under the terms of the sanction letter and the deposit of title deeds, no encumbrance could be created without SBI's consent. However, the consent decree purportedly imposed restrictions on these properties, which was beyond Respondent No. 1's authority.

33. Ld. Counsel places reliance on the Judgment of Hon'ble Supreme Court in "*Pulavarthi Venkata Subba Rao v. Valluri Jagannadha Rao* (1964) 2 SCR 310; AIR 1967 SC 591 wherein the Supreme Court held that a compromise decree is not a decision of the court, to argue that the consent decree cannot operate as a guarantee or extend the limitation period.

34. The respondent submits that no formal deed of guarantee was executed by Respondent No. 1 in favor of the appellant. The appellant's reliance on the consent decree as a contract of guarantee is misplaced, as the decree only created a joint and several obligations for payment, rather than an assurance to discharge the corporate debtor's liability upon default. Furthermore, under the terms of the sanction letter issued by SBI, Respondent No. 1 was prohibited from entering into any guarantee obligations, making the purported assurance invalid.

35. The counsel for Respondent No. 2/ SBI argued that under Rule 3(e) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for

Personal Guarantors to Corporate Debtors) Rules, 2019, invocation of a guarantee is necessary for a Section 95 petition. However, the appellant never invoked the alleged guarantee before filing the petition. The appellant's assertion that the date of default was 05.03.2020 is unfounded, as this was merely the date of the consent decree and not an invocation of a guarantee.

36. Ld. Counsel has stated that this application has been filed to delay the recovery proceedings initiated by SBI against its borrower M/s Giriraj Industries under SARFAESI ACT. SBI had granted loan of Rs. 13.80 crores to Giriraj Industries a Partnership firm wherein the Mr. Shantilal Parbatbhai Lakkad stood as Guarantor and Mortgager. Respondent No.1 executed mortgage deed in favour of SBI. The bank has issued notices under Section 13 (2) of SARFAESI Act and initiated proceedings before Debt Recovery Tribunal. The bank had also moved an application under Section 14 of SARFAESI Act before District Magistrate for physical possession of the property which was allowed on 21/22, June, 2021. These proceedings are being filed to stall the debt recovery by using different legal forums.

37. Ld. Counsel submitted that the Hon'ble High Court of Punjab and Haryana in the matter of "*Gurdev Kaur and Anr. vs Mehar Singh and Ors. (AIR 1989 P&H 324)*" (Para 19) observed that where by way of entering into execution of a Compromise Decree by the parties therein, right of third-party is getting effected, then the third party can always come forward to show that his title or interest has been affected in collusion with other persons and consequently, shall not be held binding on the third-party. Accordingly, the Consent Decree entered among

the Appellant, the CD and the Respondent No. 1 is not binding on the Answering Respondent, being not a party in the aforementioned transaction.

38. Finally, the respondent contends that a consent decree obtained through fraud or misrepresentation is liable to be set aside, as held in *Sri Krishna Khanna v. Additional District Magistrate, Kanpur* [(1975) 2 SCC 361; AIR 1975 SC 1525] and *Ajanta LLP v. Casio Keisanki Kabushiki Kaisha*. [2022 SCC OnLine SC 1270] Since the settlement terms were unauthorized, the consent decree is invalid.

39. Summing up his arguments, the Ld. Counsel for Respondent No.2 prays for dismissal of the appeal with exemplary cost.

Analysis and findings

40. After examining all facts and evidence on record, hearing all parties, and considering the arguments advanced, the following issues arise for determination:

41. Issues for consideration

- (i) Whether the Consent Decree dated 05.03.2020 constitutes a valid contract of guarantee under Section 126 of the Indian Contract Act, 1872
- (ii) Whether the invocation of personal guarantee is a precondition for initiating insolvency proceedings against the personal guarantor.
- (iii) Whether the insolvency application under Section 95 of IBC is maintainable, given the allegations of fraud in obtaining the Consent Decree.

42. We would deal with issue 1 and 2 together as the appellant has pleaded for treating consent decree as contract guarantee document and date of passing of decree as date of invocation.

43. Section 126 of the Indian Contract Act defines a "contract of guarantee" as an agreement where a guarantor undertakes to discharge the liability of a third party upon default. The appellant contends that the Consent Decree itself is a contract of guarantee. The Section 126 of the Indian Contract Act is reproduced below:

"Section 126: "Contract of guarantee", "surety", "principal debtor" and "creditor"

A contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the principal debtor", and the person to whom the guarantee is given is called the "creditor. A guarantee may be either oral or written."

44. Further, Section 126 mandates that a guarantee must be clear, unequivocal, and made with the specific intention of assuming secondary liability in case of default by principal debtor. Courts have repeatedly held that a contract of guarantee cannot be implied in the absence of clear terms. The case of the appellant is that the guarantee in this case was oral and same was turned into a written document by the consent decree passed by the Civil Court.

45. The relevant para 2 of the consent decree dated 03.02.2020 passed by the Principle Civil Judge Rajkot is reproduced below:

"We-defendants hereby give assurance to plaintiffs that we will pay legal dues of plaintiffs with interest along with losses incurred to them as soon as possible and we also give undertaking that we will not transfer, assign, sell, loan, lease, mortgage, or create lien on the properties described in relief Para-14 of above suit."

46. Respondent No. I as one of the defendant in the case voluntarily agrees to pay the appellant the legal dues of the plaintiff. It is seen from the decree that there are five defendants in this case viz. (i) Sunrise Ginning Pvt. Ltd. Company/**Corporate Debtor**, (ii) Harsukhbhai Parbatbhai Lakkad, (iii) Pradipbhai Govindbhai Lakkad, (iv) Shantibhai Parbatbhai Lakkad/ Respondent No.1 and (v) Hemantbhai Parbatbhai Lakkad.

47. In the present case, there is no independent documentary evidence establishing that Respondent No. 1 voluntarily undertook the role of a personal guarantor. The decree does not state that the liability of Respondent No. 1 arises only upon default of the corporate debtor. A perusal of the decree reveals that it does not contain any express promise by Respondent No. 1 to act as a guarantor; rather, it records a joint and several liability.

48. It is a settled principle of law that a Consent Decree does not establish fresh financial liability, but merely records a private settlement. A decree-holder may qualify as a creditor, only if the decree conclusively determines liability after due judicial scrutiny, which is absent in this case.

49. Hon'ble Supreme Court in **Pulavarthi Venkata Subba Rao v. Valluri Jagannadha Rao, AIR 1967 SC 591** held that a Consent Decree is merely a formal acknowledgment of an agreement between parties and does not create fresh legal obligations unless explicitly stated. It ruled that limitation periods for enforcing a debt are not automatically extended by a Consent Decree unless it contains a clear acknowledgment of liability. The respondent cited this case to argue that the Consent Decree dated 05.03.2020, relied upon by the appellant, was only a recorded settlement and did not establish fresh liability against Respondent No. 1 as a personal guarantor. Just as the Supreme Court in this case ruled that a Consent Decree cannot extend the limitation period, the present decree cannot serve as conclusive proof of debt under the Insolvency and Bankruptcy Code (IBC).

50. In the Code the definition of Term "Personal Guarantor" means an individual whose is the surety in a contract of guarantee to a Corporate Debtor. In this case there is no written contract of guarantee qua the CD and there is no invocation of guarantee by the Creditor.

51. Under Rule 3(e) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, a guarantor is liable only when the guarantee has been invoked and remains unpaid. The appellant has not produced any evidence that the alleged guarantee was ever invoked. Instead, the appellant's application under Section 95 directly treats date of Consent Decree as the "default date," which is legally untenable. We have seen from the terms of the decree that the defendants

have agreed to pay the plaintiff 'as soon as possible'. There is no timeline in the said decree. The use of phrase 'as soon as possible' in the decree leaves the entire liability as open ended. It would inter alia mean as and when the defendant is in a position to pay then only, he would pay. On the other hand, in case of any guarantee after the invocation of guarantee the guarantor has to pay the guaranteed amount within the specified time period. It is clear from the above that the aforesaid consent decree has no elements of a guarantee as envisaged by IBC, 2016.

52. The Hon'ble Supreme Court in *Laxmi Pat Surana v. Union Bank of India*, (2021) 8 SCC 481, held that the liability of a guarantor arises only upon invocation. Since there was no invocation in the present case, the insolvency application is defective and not maintainable.

53. The appellant in its submission has cited several cases of Hon'ble Supreme Court, Hon'ble High Courts and this Tribunal to support his claim that even oral contract of guarantee can be invoked and a decree holder can also invoke guarantee as a creditor. These citations are discussed herein for their applicability in the present matter:

(i) **P. J. Rajappan v. Associated Industries Pvt. Ltd. & Anr., 1989 SCC**

OnLine Ker 312 - The appellant cites this Judgment of Hon'ble Kerala High Court to argue that a contract of guarantee can be oral or implied and does not necessarily require a written agreement. In *P. J. Rajappan* (supra), the Hon'ble Kerala High Court upheld a contract of guarantee based on consistent conduct and clear oral assurances made by the

alleged guarantor, which were further supported by documentary evidence. However, in the present case, there is no independent evidence beyond the Consent Decree that may suggest that Respondent No. 1 voluntarily assumed the role of a personal guarantor. As we have seen from the relevant clause of the Consent Decree that it is merely a settlement agreement that does not explicitly state that Respondent No. 1 intended to act as a personal guarantor. Additionally, the alleged guarantee was not separately documented nor supported by any communications, correspondences, or other written assurances. Since Hon'ble Supreme Court has consistently held that a contract of guarantee requires clear and explicit evidence of consent, the absence of such evidence in the present case the ratio of Judgment supra does not apply.

- (ii) **Mir Niyamath Ali Khan v. Commercial and Industrial Bank Ltd., 1967 SCC OnLine AP 48** -The appellant cites this case of Andhra Pradesh High Court to argue that the Consent Decree constitutes a valid guarantee under the Indian Contract Act, 1872. However, in the matter of Mir Niyamath Ali Khan (supra), the guarantee in question was a properly executed contract with express acknowledgment of liability, and the guarantor's consent was unambiguous and supported by a pre-existing written agreement. In the present case, there is no independent contract of guarantee apart from the disputed Consent Decree. The decree was not the result of a contested court proceeding, where

liability was determined but only a private compromise. Moreover, the respondent has challenged the decree's validity on the grounds that it was obtained without disclosing the CIRP proceedings of the Corporate Debtor, which further undermines the appellant's reliance on this case. The ratio of the aforesaid case does not apply in the present case because, the present decree does not contain acknowledgment of personal guarantee obligations.

- (iii) **Mathura Das & Ors. v. Secretary of State and Anr., 1930 SCC OnLine All 208** - The appellant relies on this case of Allahabad High Court to argue that a contract of guarantee can be implied from the conduct of the parties. However, in Mathura Das (supra), the guarantor's actions clearly demonstrated an intention to assume liability, including repeated assurances to the creditor and substantial financial involvement. Court in that case was able to infer an implied contract of guarantee based on strong circumstantial evidence and written communications.

In contrast, in the present case, the appellant has failed to produce any evidence beyond the Consent Decree to establish that Respondent No. 1 intended to act as a guarantor. The decree does not contain specific terms outlining the nature, scope, or enforceability of the alleged guarantee, making it inadequate as proof of an implied guarantee under IBC.

- (iv) **Pushpa Devi Bhagat v. Rajinder Singh, (2006) 5 SCC 566** - The appellant has cited this case decided by Hon'ble Supreme Court to argue that a Consent Decree is equivalent to a contract with the approval of the court. However, in *Pushpa Devi Bhagat* (supra), Hon'ble Supreme Court dealt with the finality of Consent Decrees in civil disputes and not their applicability under insolvency law. IBC requires that a financial debt must be clear, legally enforceable, and not subject to dispute or suspicion of fraud. Since the Consent Decree in this case is being challenged for fraudulent execution, its enforceability is itself questionable. *Pushpa Devi Bhagat* does not address situations where a Consent Decree is obtained under alleged fraudulent circumstances, making it inapplicable to the present case.
- (v) **Ashok Agarwal v. Amitex Polymers Pvt Ltd., 2021 SCC OnLine NCLAT 49** -The appellant relies on this case decided by this Tribunal to argue that a decree holder qualifies as a creditor under Section 95 of the IBC and therefore has the right to initiate insolvency proceedings against the respondent. However, in *Ashok Agarwal*, the decree in question was a result of a contested court proceeding, where liability was adjudicated and finalized after due process. The decree was not a mere settlement, but a judicial determination of liability, making it enforceable under IBC. In contrast, in the present case, the Consent Decree dated 05.03.2020, was not an adjudicated decree, but a compromise between parties recorded by the civil court. The court did

not examine or decide upon the merits of the claim or the alleged guarantee before passing the decree, making it fundamentally different from the facts in Ashok Agarwal (supra). The appellant's reliance is misplaced on the aforesaid case as it applies only to cases where the decree conclusively establishes an undisputed financial liability, which is not the situation in the present case.

- (vi) **Laxmi Pat Surana v. Union Bank of India, (2021) 8 SCC 481** - The appellant has cited Laxmi Pat Surana (supra) to argue that the default date should be considered as the date of the Consent Decree. However, in Laxmi Pat Surana (supra), the liability of the guarantor was based on a valid and enforceable contract, whereas in this case, the alleged guarantee is based solely on the disputed Consent Decree, which is not an independent guarantee agreement. Without a separate, enforceable guarantee, the appellant's reliance on this case is misplaced.

54. It is an admitted fact that the Directors of the appellant and the Corporate Debtor are related to one another and both are family run businesses. Similarly, the plaintiffs and decedents in Consent Decree including the Directors of the companies involved are all related to each other.

55. In view of aforesaid discussion, we are unable to treat the 'Consent decree' as a contract guarantee document within the framework of IBC. We also hold that contract guarantee should be separately documented with clear laid down provisions for invoking the said guarantee and same should have been duly invoked, which is not the case here.

Issue 3: Whether the insolvency application under Section 95 of IBC is maintainable, given the allegations of fraud in obtaining the Consent Decree

56. Bank of Baroda (Erstwhile Dena Bank) the Financial Creditor of Sunrise Ginning Pvt. Ltd. (CD) had filed a petition under Section 7 of the IBC, 2016 seeking initiation of CIRP against the Corporate Debtor. The said petition No. C.P. (IB) No.559/7/NCLT/AHM 2018 was accepted by the Adjudicating Authority and by an order dated 20.11.2019, the CD was admitted in insolvency. The Adjudicating Authority appointed an IRP and declared moratorium w.e.f from the said date. The said moratorium apart from other restrictions imposed the following specific restrictions upon the CD under section 14(1)(a):

"(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal arbitration panel or other authority"

57. The aforesaid moratorium continued till 12.03.2020, when a bench of this Tribunal quashed the CIRP proceedings and the moratorium under Section 14 of IBC ended accordingly.

58. On 02.01.2020, during the pendency of the aforesaid moratorium against the CD, the appellant filed Special Civil Suit No. 02 of 2020 before the Principal Civil Judge, Rajkot, seeking recovery of the dues and an injunction to restrain Respondent No. 1 and other guarantors from disposing of their assets. A consent decree was passed on 05.03.2020, signed by Respondent No. 1. The decree

obligated the CD and Respondent No. 1 to pay Rs.5,77,85,361/- including interest, to the appellant. At this point also the moratorium was in effect.

59. Respondent No. 2 (State Bank of India) has alleged that the Consent Decree was obtained fraudulently, without disclosing the ongoing Corporate Insolvency Resolution Process (CIRP) against M/s Sunrise Ginning Private Limited. It is undisputed that at the time the decree was executed, the moratorium under Section 14 of IBC was in force, rendering any settlement involving the corporate debtor legally impermissible.

60. We have already seen that the plaintiffs and dependents in the aforesaid civil suit before the Principle Civil Judge Rajkot are related to one another. We are also aware that the properties of the several defendants including Respondent No.1 were already mortgaged to Respondent No.2 for which the mortgage deed and guarantee documents are on record.

61. It is clear from the above that the CD was in moratorium from 20.11.2019 to 12.03.2020 during which period initiation of any suit against the CD was barred under Section 14 of IBC. The IRP was in control of the CD during this period and the Directors of the CD were not authorised to sign any documents relating to CD during the moratorium. However, this fact was not brought to the notice of Ld. Principal Civil Judge, Rajkot in whose court the consent suit was filed and subsequently decree obtained.

62. It is seen from the consent decree passed by Principal Civil Judge Rajkot on 05.03.2020 that the aforesaid decree has been signed by Directors of Sunrise Ginning Pvt. Ltd. The relevant portion of the consent decree is extracted below:

In the Court of Principal Civil Judge at Rajkot

Spe.C. Case .No.02/2020

Directors of Shrinathji Spintex Pvt. Ltd.

- 1/1 **Ravibhai Harsukhbhai Lakkad**
Hindu, Adult, Occupation: Business,
At: 3-Pradyuman Park, Plot No.83,
Satyasai Heart Hospital Road,
Rajkot.
- 1/2 **Jatinbhai Dhirajlal Lakkad**
Hindu, Adult, Occupation: Business,
At: Gitabnagar-1, Ashutosh Apartment,
Flat No.2, Dhebar Road,
Rajkot.

....Plaintiffs

¶ Vs.

- 1) **Sunrise Ginning Pvt. Ltd. Company**
A company registered under the Companies
Act..
At: Juna Upleta Road, Bhola Patiya,
Dhoraji.
- 2) **Harsukhbhai Parbatbhai Lakkad**
Hindu, Adult, Occupation: Business,
At: 3-Pradyuman Park, Plot NO.83,
SATyasai Heart Hospital Road, Rajkot.
- 3) **Pradipbhai Govindbhai Lakkad**
Hindu, Adult, Occupation: Business,
At: Mavji Jina Society, Nr. Soni Samaj,
Bus Station Road, Manavadar.
- 4) **Shantibhai Parbatbhai Lakkad**
Hindu, Adult, Occupation: Business,
At: Mekhatimbi, Ta. Upleta, Dist.
Rajkot.

18

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5) Hematbhai Parbatbhai Lakkad
Hindu, Adult, Occupation: Business,
At: Navinnagar Co. Op. Hou. So. Ltd,
Jalaram-2, University Road, Rajkot.

....Defendants

Subject: Decree for specific performance.

We, the undersigned parties, hereby humbly pray that we have reached a settlement with this application and it is prayed to grant decree for specific performance as under.

1) Plaintiffs and defendants have reached a settlement on their own. Plaintiff has filed present suit pursuant to the subject and dispute wherein plaintiff is liable to get dues of Rs.5,77,85,361/- and said fact is admitted by defendants. Further, any financial losses incurred is also admitted by defendants.

2) We-defendants hereby give assurance to plaintiffs that we will pay legal dues of plaintiffs with interest along with losses incurred to them as soon as possible and we also give undertaking that we - will not transfer, assign, sell, loan, lease, mortgage, or create lien on the properties described in

19

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relief Para-14 of above suit.

3) Thus, plaintiffs have filed above suit against defendants and a settlement has been reached as per above facts and defendants hereby admit legal dues of plaintiffs. Considering above fact, we have no objection to decree of specific performance, and therefore, it is prayed to grant above decree of specific performance.

4) Cost of this decree of specific performance will be borne by parties separately.

Sd./-
Directors of
Shrinathji Spintex
Pvt. Ltd.

1/1 Ravibhai
Harsukhbhai Lakkad

Sd./-
Plaintiff-Advocate

Sd./-
Directors of Sunrise
Ginning Pvt. Ltd. a
company registered
under the companies
act

1) Harsukhbhai
Parbatbhai Lakkad
Sd./-

Sd./-
1/2 Jatinbhai
Dhirajbhai Lakkad

Sd./-
2) Pradipbhai
Govindbhai Lakkad

3) Sd./-
Shantibhai Parbatbhai
Lakkad

Sd./-
4) Hematbhai
Parbatbhai Lakka

Sd./-
Defendant-Advocate

TRUECOPY


Jaimin R. Dave

63. It is clear from the above documents that the aforesaid suit against CD was filed by the appellant during the moratorium period when IRP was in control of the CD. The Directors of the CD were not authorized to sign any document during the moratorium period on behalf of the CD. The consent decree was obtained by collusion and fraud by plaintiffs and defendants, who are related to each other.

64. Hon'ble Supreme Court in **Sri Krishna Khanna v. Additional District Magistrate, Kanpur & Ors. [(1975) 2 SCC 361; AIR 1975 SC 1525]** held that a Consent Decree obtained through fraud, coercion, or undue influence is void and unenforceable, emphasizing that courts must scrutinize such decrees to prevent circumvention of statutory protections. The principle that fraud vitiates all judicial proceedings, including compromise decrees, was reinforced. The Consent Decree in the present case was executed without disclosing the Corporate Debtor's ongoing CIRP, it violated the moratorium under Section 14 of IBC. Therefore, the decree was legally void and could not establish any enforceable liability against Respondent No. 1.

65. Hon'ble Supreme Court in **Ajanta LLP v. Casio Keisanki Kabushiki Kaisha d/b/a Casio Computer Co. Ltd. (2022 SCC OnLine SC 1270)** held that a Consent Decree obtained by suppressing material facts or through misrepresentation is void and unenforceable. It emphasized that courts must ensure such decrees are not misused to gain an unfair advantage. The respondent relied on this case to argue that the Consent Decree dated 05.03.2020, executed without disclosing the Corporate Debtor's insolvency

status, was legally unenforceable. Since the Supreme Court held that a decree obtained through misrepresentation is void, the present decree could not be relied upon as evidence of a legally binding personal guarantee under IBC.

66. In the present case, the appellant failed to disclose the CIRP status of the corporate debtor when obtaining the decree. Further, the decree purportedly imposed obligations on mortgaged properties without the consent of SBI, the secured creditor, in violation of contractual terms. Given these facts, the Consent Decree is prima facie vitiated by fraud and cannot be the basis for insolvency proceedings.

67. We, therefore, hold that the consent decree was vitiated by fraud and is ab-initio void and unenforceable in IBC proceedings. Thus, all three issues are decided against the appellants.

Company Appeal (AT) (Ins) No. 1837, 1838 of 2024

68. The Comp. App. (AT) (Ins.) No. 1837 of 2024 also assails the order passed by AA in CP (IB) No. 26 (AHM) of 2023. The appeal has been filed by Mr. Rajendra Jain, who is the Resolution Professional in CP (IB) No. 26 (AHM) of 2023, challenging the order dated 31.07.2024, passed by the NCLT, Ahmedabad Bench. The appeal involves Mr. Shantilal Parbatbhai Lakkad (R1/ Personal Guarantor), along with Shrinath Ji Spintex Private Limited (R2/ applicant seeking insolvency proceedings), and State Bank of India (R3/secured financial creditor).

69. The Comp. App. (AT) (Ins.) No. 1838 of 2024 arises from the order passed by Ld. AA in the CP (IB) No. 25 (AHM) of 2023, in which Mr. Hemantbhai

Parbatbhai Lakkad is the Personal Guarantor of the same CD viz. Sunrise Ginning Private Limited. In this case, Mr. Rajendra Jain (appellant/ Resolution Professional) has challenged the order dated 31.07.2024, passed in CP (IB) No. 25 (AHM) of 2023. This case involves Mr. Hemantbhai Parbatbhai Lakkad (R1/ another personal guarantor of Corporate Debtor M/s Sunrise Ginning Private Limited), Shrinathji Spintex Private Limited (R2/ applicant seeking insolvency proceedings), and State Bank of India (R3/secured financial creditor).

70. The Mr. Rajendra Jain (appellant/ Resolution Professional) in these two cases has sought relief against the Impugned Order dated 31.07.2024 passed by the Hon'ble NCLT, Ahmedabad Bench in CP (IB) No. 26 (AHM) of 2023 and CP (IB) No. 25 (AHM) of 2023. The orders of AA in both the impugned orders qua RP are exactly the same. Through these Appeals, the Appellant seeks deletion or modification of the adverse remarks made against him, setting aside of the penalty of Rs. 1 lakh imposed upon him, and cancellation of the direction to refer his name to the Insolvency and Bankruptcy Board of India (IBBI).

71. The counsel for appellant has submitted that while dismissing the Section 95 petition filed by Shrinath Ji Spintex Private Limited, the Hon'ble NCLT made certain adverse findings against the Appellant. The Appellant had been appointed as Resolution Professional under Section 97(5) of the Code by the Tribunal itself. He submitted a report recommending initiation of insolvency against Respondent No. 1 after duly following the procedures under Sections 95 and 99 of the Code. This report was submitted in accordance with the mandate and powers conferred under the Code.

72. He further submitted that Srinathji Spintex Pvt. Ltd./ Respondent No. 2 had filed the Section 95 application on the basis of a Consent Decree dated 05.03.2020 passed by the Ld. Principal Civil Judge, Rajkot, wherein Mr. Shantilal Parbatbhai Lakkad and Mr. Hemantbhai Parbatbhai Lakkad had agreed to act as guarantor for the debt of M/s Sunrise Ginning Private Limited. However, the Hon'ble NCLT passed adverse remarks and directions against the Appellant merely on the ground of an alleged incorrect interpretation of the Code. The Appellant submits that even if there was any mistake in understanding legal provisions, such errors do not by themselves justify imposition of penalties or harsh observations, particularly when no mala fide intent has been alleged. In this regard, reliance is placed on the Hon'ble Supreme Court's judgment in *Krishna Prasad Verma (D) through LRs v. State of Bihar & Ors.*, [Civil Appeal No. 8950 of 2011].

73. He further submitted that the Tribunal failed to consider that a Consent Decree can form the basis for initiating insolvency proceedings against a personal guarantor. In *Urgo Capital Ltd. v. Bangalore Dehydration and Drying Equipment Co. (P) Ltd.*, [2020 SCC OnLine NCLAT 149], it was held that a decree holder is treated as a creditor under the Code, and a petition under Section 7 based on a decree is maintainable.

74. The Appellant also submits that a contract of guarantee is not necessarily required to be in writing. By signing the Consent Decree, Respondent No. 1 agreed to act as guarantor, thereby creating a valid guarantee obligation under law.

75. Ld. Counsel further submitted that the Impugned Order lacks proper reasoning and has imposed disproportionate punishment on the Appellant. The penalty was imposed and directions were issued without any detailed findings or justification. The Appellant was only performing his duties under the Code and cannot be faulted for any alleged misinterpretation of law. Therefore, the findings and directions against the Appellant in the Impugned Order are liable to be set aside.

76. The Appellant prays that the Impugned Orders dated 31.07.2024 passed by the Hon'ble NCLT, Ahmedabad in the relevant Company Petition be set aside to the extent it contains adverse remarks against the Appellant, imposes a penalty, and directs referral of his name to the Insolvency and Bankruptcy Board of India, along with any other relief deemed fit by this Appellate Tribunal.

77. The Respondent No.3 SBI in these two cases has made the same submission as in the main appeal (CA (AT) (Ins.) No. 1694 of 2024).

Analysis and Findings

78. We have already held earlier that the consent decree cannot be treated as Guarantee Document for the purpose of IBC and secondly that a guarantee has to be invoked in terms of guarantee document. Even if it's considered that the aforesaid consent decree operates as a guarantee document, the same has not be invoked.

79. We had further held that the aforesaid consent decree has been obtained by collusion and fraud.

80. In this regard, the role of RP needs further examination in the light of provisions of IBC. Section 99 of IBC, 2016 provides for submission of report by Resolution Professional to the Adjudicating Authority. Relevant Section 99 (4) of the Code is extracted below:

“4) For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.”

81. This Section gives RP full powers to seek any information from the debtor, creditors, or other relevant parties to properly review an application for insolvency resolution. If the RP had examined the consent decree, he would have been clearly aware that the plaintiffs and defendants in the civil suit were Related Parties, which creates a potential conflict of interest. This fact has also been admitted on record.

82. Further, RP was aware that CD was under going insolvency proceedings and was under moratorium during the decree period. Relevant portion of his report is extracted below:

“ About the Corporate Debtor- M/s Sunrise Ginning Pvt. Ltd.

- *C.P. (I.B.) No.559/7/NCLT/AHM/2018 under section 7 of the IBC 2016 was filed by the M/s. Bank of Baroda for initiation of CIRP.*
- *CIRP Initiated in C.P. (I.B.) No. 559/7/NCLT/AHM/2018 on 20.11.2019.*
- *Hon'ble NCLAT set aside the order of admission of CIRP vide order dated 12.03.2020 in company appeal (AT) (Insolvency) 32/2020”*

83. However, despite knowing this, the RP recommended the initiation of insolvency proceedings based on the aforesaid consent decree which was obtained during the moratorium period, in express violation of Section 14 (1) of IBC. The main role and duty of Resolution Professional is to implement the provisions of IBC in insolvency proceedings. How could he recommend a consent decree obtained during the moratorium period to be used as a guarantee is beyond comprehension. It prima facie reflects either incompetence or collusion with Shrinathji Spintex Pvt. Ltd and CD to save the guarantors from ongoing legal proceedings by SBI.

84. The Appellant has relied on the Judgment in Krishna Prasad Verma (D) through LRs v. State of Bihar & Ors., Civil Appeal No. 8950 of 2011, to argue that even if he made a legal mistake, it should not lead to penalties unless there was bad intention. However, that case was about land matters and not insolvency law. It was decided in a completely different context.

In the present case, the Appellant was working as a Resolution Professional (RP) under the Insolvency and Bankruptcy Code (IBC), where professionals are expected to act strictly in accordance with law, Rules and Regulations under IBC. Here, the Appellant submitted a report recommending action against a personal guarantor, without first ascertaining whether the consent decree which he treated as guarantee document was legally valid. It shows negligence and lack of due diligence in performing his duty under the IBC.

85. The Appellant has also referred to *Urgo Capital Ltd. v. Bangalore Dehydration and Drying Equipment Co. (P) Ltd.*, 2020 SCC OnLine NCLAT 149, to argue that a court decree is enough to start insolvency proceedings. But that case dealt with a creditor filing a case under Section 7 of the IBC against a company (corporate debtor), based on a money decree. In the present case, however, the issue is different. The Appellant, as RP, filed a report under Section 99 of the IBC against a personal guarantor based on a Consent Decree. The question here is whether the Consent Decree actually creates a valid legal guarantee against the Personal Guarantor, which we have held that is not so in the instant case. Accordingly, the ratio of the aforesaid Judgment does not apply in this case.

86. The penalty and other direction passed by the NCLT were not only because of a wrong interpretation of law, but because the Appellant failed to perform his basic duty of verifying, whether the personal guarantee really existed. The IBC gives a Resolution Professional specific powers, but it also requires them to act responsibly. If an RP submits reports without checking key facts or applicable laws, it can cause unnecessary and wrongful insolvency proceedings. In such cases, the Tribunal has every right to take corrective action, as it did here, to maintain integrity of the insolvency process.

87. In view of the findings in the main Comp. App. (AT) (Ins.) No. 1694 of 2024 and the aforesaid two appeals, we find no infirmity in the orders of the Adjudicating Authority.

88. Accordingly, Comp. App. (AT) (Ins.) No. 1694 of 2024, Comp. App. (AT) (Ins.) No. 1837 & Comp. App. (AT) (Ins.) No. 1838 of 2024 are dismissed. Pending I.As., if any, are closed. No order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

SA/Pragya (LR)