

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 2205 of 2024 &
I.A. No. 8264, 8265 of 2024

(Arising against the impugned order dated 07.10.2024 passed by the Hon'ble National Company Law Tribunal, New Delhi Bench (Court-III), in I.A. No. 4749/2022 in C.P. (IB) No. 612/2022)

IN THE MATTER OF:

State Bank of India

Corporate Centre:

State Bank Bhawan,
Madam Cama Road,
Nariman Point, Mumbai-400021.

also at:

Stressed Assets Management
Branch-I at 12th floor,
Jawahar Vyapar Bhawan, 1,
Tolstoy Marg, New Delhi-110001.

...Appellant

Versus

M/s L.R. Builders Pvt. Ltd.

Office at:
8233, LR Complex, Rani Jhansi Road Near Filmistan
Cinema, New Delhi-110006.

...Respondent

Also at:
303, B8 GDITL Tower, Netaji Subhash Place, Netaji
Subhash Place, Pitampura, New Delhi-110034.

Present:

For Appellant: Mr. Ankur Mittal & Ms. Muskan Jain, Advocates.

For Respondents: Mr. Gaurav Mitra, Ms. Kanika Singhal, Ms. Lavanya Pathak, Ms. Muskan Puri, Mr. Prabhas Bajaj, Advocates.

Cont'd..../

J U D G M E N T
(23rd May, 2025)

INDEVAR PANDEY, MEMBER (T)

The present Appeal, bearing Company Appeal (AT) (Ins.) No. 2205 of 2024, has been filed by the **Appellant – State Bank of India** – under Section 61 of the Insolvency and Bankruptcy Code, 2016, challenging the Impugned Order dated 07.10.2024 passed by National Company Law Tribunal, New Delhi Bench (Court-III) (**Adjudicating Authority**), in I.A. No. 4749/2022 in C.P. (IB) No. 612/2022. By the said order, Adjudicating Authority (in short '**AA**') dismissed the Appellant's petition under Section 7 of the IBC filed against **M/s L.R. Builders Pvt. Ltd. (Corporate Guarantor)**, and allowed I.A. No. 4749/2022 filed under Section 65 of the Code, wherein the Respondent had alleged that the Appellant had initiated insolvency proceedings with fraudulent and malicious intent.

2. Aggrieved by the findings and the dismissal of the Section 7 petition, the Appellant has approached this Appellate Tribunal. The Appellant does not seek revival of the CIRP or reversal of the dismissal of the Section 7 petition, especially in light of the final settlement having been reached with the borrower. Instead, the limited prayer in this Appeal is to seek expungement of adverse findings and remarks passed under Section 65 of the IBC, which, if allowed to stand, cause serious prejudice to the Bank's institutional reputation and lawful recovery efforts.

Brief facts of the case:

3. The brief facts of the case are as under:
- i. The present Appeal has been filed by the State Bank of India (Appellant) under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code'), against the impugned order dated 07.10.2024 passed by the National Company Law Tribunal, New Delhi Bench, in C.P. (IB) No. 612/2022, whereby the Appellant's petition under Section 7 of the IBC seeking initiation of CIRP against the Respondent – M/s L.R. Builders Pvt. Ltd. (Corporate Guarantor) was dismissed, and I.A. No. 4749 of 2022 filed by the Respondent under Section 65 of the IBC was allowed.
 - ii. The erstwhile State Bank of Bikaner and Jaipur (e-SBBJ) sanctioned a term loan of Rs.60 Crores to the borrower – M/s P.P. Jewellers (Delhi), a partnership firm on 31.12.2011. On the same day, the Respondent executed a Corporate Guarantee in favour of e-SBBJ, securing the said loan.
 - iii. On 23.02.2012, the Appellant (SBI) separately sanctioned a Working Capital Facility of Rs.40 Crores to the same borrower. The Respondent also executed a separate Deed of Corporate Guarantee in favour of SBI on the same date, securing this second facility.
 - iv. These credit facilities were renewed by the lenders from time to time:
 - On 05.02.2013, e-SBBJ renewed the Rs.60 Crores loan. The Respondent signed this renewal.

- On 12.02.2014, e-SBBJ issued another renewal (not signed by the Respondent).
 - SBI renewed its Rs.40 Crores facility on 31.03.2014 and 27.04.2015, with both sanction letters duly signed by the Respondent.
- v. On 31.10.2014, the Respondent executed a Revival Letter acknowledging the Rs.60 Crores liability under the e-SBBJ facility. On 03.02.2015, it executed another Revival Letter acknowledging the Rs.40 Crores liability under the SBI facility. On 21.01.2016, the borrower executed a Balance Confirmation, which also bore the Respondent's stamp, reaffirming the acknowledged debt.
- vi. On 16.04.2015, e-SBBJ issued a sanction letter proposing enhancement of the Rs.60 Crores facility to Rs.80 Crores, subject to a proposed change in the borrower's partnership structure. However, the said sanction was never signed by the borrower or Respondent and was never acted upon. No loan agreement or guarantee followed, and no disbursal was made under this enhancement.
- vii. Meanwhile, the borrower's account turned irregular. In a Joint Lenders Forum (JLF) meeting held on 18.11.2015, it was recorded that the borrower account had been classified as SMA-2 on 03.11.2015 and was expected to turn NPA by 03.12.2015. The borrower, represented by Mr. Kamal Gupta, assured that the accounts would be regularised by 30.11.2015, which did not happen.

- viii. The borrower's accounts were declared Non-Performing Assets (NPA) by SBI on 31.12.2015, and by e-SBBJ on 31.03.2016, in line with RBI norms. This was prior to merger of e-SBBJ with SBI on 01.04.2017.
- ix. Post-NPA, certain book entries and credit transactions were recorded in the loan accounts:
- Several amounts, including Rs.3.60 Cr (11.01.2016), Rs.4 Cr (29.01.2016), Rs.7.60 Cr (17.02.2016), and others, were entered as crystallisations or EPC conversions.
 - An EPC amount of Rs.1.70 Cr disbursed on 21.03.2016 was crystallised on 03.06.2016.
 - On 10.11.2016, Rs.22.10 Cr was transferred internally between accounts.
- x. In view of the borrower's default, the Appellant initiated recovery measures under the SARFAESI Act, 2002, by issuing demand notices under Section 13(2) to the borrower and the Respondent (guarantor), followed by symbolic possession under Section 13(4).
- xi. Simultaneously, the Appellant also instituted proceedings before the Debt Recovery Tribunal (DRT) by two separate proceedings:
- a) OA 634/2016 for Rs.60 Crores.
 - b) OA 364/2016 for Rs.40 Crores.

- xii. On 15.01.2018, a composite One-Time Settlement (OTS) proposal was submitted by the borrower and its group companies – P.P. Jewellers Pvt. Ltd. and P.P. Jewellers (Exports). The proposal was initially approved by the bank but it failed on 19.03.2019 due to non-compliance by borrowers with payment obligations.
- xiii. The respondent vide their emails dated 13.09.2021 and 15.09.2021, unequivocally acknowledged its position as Corporate Guarantor and requested SBI to share the statement of dues to enable repayment. These were clear acknowledgments of liability under Section 18 of Limitation Act.
- xiv. The respondent SBI on 13.06.2022, filed a petition under Section 7 of the IBC, numbered C.P. (IB) No. 612/2022, before the Hon'ble NCLT, New Delhi Bench, against the Respondent as a Corporate Guarantor.
- xv. In response, the Respondent filed I.A. No. 4749/2022 under Section 65 IBC, alleging that the Section 7 petition was initiated fraudulently and maliciously, with reliance on an unsigned 2015 sanction letter and collusion with the borrower.
- xvi. While the CIRP petition was pending, the borrower submitted a fresh OTS proposal dated 16.05.2022. The Appellant approved this proposal on 26.07.2022, and the formal sanction letter was issued on 30.11.2022.
- xvii. Subsequently, the Appellant filed I.A. No. 441/2023 before DRT-II on 14.03.2023, seeking issuance of a Recovery Certificate for Rs.24,69,00,073.04 along with interest at 16.70% per annum, based on the revised OTS terms.

- xviii. The borrower sought extensions and completed the final OTS payment by 28.11.2024. The successful settlement was recorded by the Hon'ble High Court in its order dated 29.11.2024 in LPA No. 963/2024.
- xix. Meanwhile, the Adjudicating Authority had already passed the impugned order on 07.10.2024, whereby it held the following in paras 34 and 35 of the order:

“34. The series of events and the facts and circumstances enumerated above would definitely go to show that the officials of the State Bank of India and the Principal Borrower/PP Jewellers (Delhi) and Mr. Kamal Kumar Gupta have connived and colluded and deliberately filed the Section 7 application against the Applicant/LR Builders Pvt. Ltd./Personal Guarantor fraudulently with malicious intent for the purpose other than the Resolution of Insolvency of the Corporate Debtor.

35. We are therefore, of the considered opinion that the Section 65 application needs to be allowed. Accordingly, we allow the application ie. IA-4749/2022 under Section 65 of the Code. No order as to costs.

IB-612/ND/2022-

In view of the order passed in IA-4749/2022, wherein the application filed under Section 65 of the Code by the Respondent/Lit Builders Pvt. Ltd. is allowed. Consequently, the main petition bearing IB-613/ND/2019 filed under Section 7 of the Code is dismissed.”

- xx. Aggrieved, the Appellant filed Company Appeal (AT)(Insolvency) No. 2206/2024, challenging the dismissal of its Section 7 petition. However,

the appeal was dismissed on 28.01.2025, as the borrower's account had already been settled through OTS.

- xxi. The Appellant has now filed the present appeal, limited to challenging the findings and observations made by the NCLT under Section 65 of the IBC, particularly the allegations of malafide intent and abuse of process.

Submissions of the Appellant

4. Ld. Counsel for the Appellant submits that even if all the findings made by the Ld. NCLT regarding the issues raised by the Respondent are accepted without challenge, they still do not make out a valid case under Section 65 of the Insolvency and Bankruptcy Code. This provision can only be invoked when the proceedings are initiated with a fraudulent or malicious intent, which is not even alleged properly, let alone proved in this case.

5. In this regard Ld. Counsel places reliance on the decision of this Appellate Tribunal in *Sanjay Pandurang Kalate v. Vistra ITCL (India) Ltd.*, Company Appeal (AT)(INS) No. 742/2023, wherein it has been held that if someone claims a transaction is collusive or fraudulent, the standard of evidence required must be very high - beyond reasonable doubt and of an unquestionable nature. In the present case, there is absolutely no such evidence on record.

6. Ld. Counsel for the Appellant submitted that the Adjudicating Authority only considered first order of single Judge of Hon'ble High Court of Delhi in W.P (C) No. 3158 dated 12.03.2024 wherein Hon'ble High Court directed that Section

65 matter should be heard prior to Section 7 of IBC. This order was modified by an order of Division Bench on 21.03.2024 passed in LPA 236/2024 wherein Hon'ble High Court directed that NCLT shall proceed with the hearing of both Section 7 and Section 65 petitions simultaneously in accordance with law. However, the AA has not taken cognizance of this order of Hon'ble High Court and in paragraph 4 of the Impugned Order, the AA referred only to the earlier order dated 12.03.2024 in W.P. (C) No. 3158 of 2024.

7. It is the submission of Ld. Counsel that the subsequent order dated 21.03.2024 was duly filed before the AA through additional documents dated 02.04.2024. Despite this, the NCLT completely ignored the High Court's later order and proceeded wrongly on the assumption that Section 65 had to be decided first, which was legally incorrect.

8. Ld. Counsel further submitted that AA failed to properly consider the relevant loan and guarantee documents. The Appellant respectfully points out that in paragraph 16 of the Impugned Order, the Tribunal referred to Clause 8 of the guarantee deed, but incorrectly quoted a clause that actually pertains to the loan agreement, not the guarantee deed.

9. In particular he invited attention to the several clauses of the loan agreement and guarantee deed agreement which have not been properly examined by AA in the impugned order. These are as follows:

- Loan Agreement – Clause 54: security is continuous.

- Guarantee Deed – Clauses:
 - Clause 1: liability is payable on demand.
 - Clause 6: enforceable against all guarantors jointly and severally.
 - Clause 8: the guarantee is continuing in nature.
 - Clause 9: the Bank may at its discretion demand the principal and interest from the guarantors.
 - Clause 11: guarantee is irrevocable.
 - Clause 12 & 19: acknowledgments by borrower bind the guarantor.
 - Clause 18: guarantee is independent of borrower liability.

10. The appellant in support of his contention has relied on the following Judgments:

- i. The Judgment of Hon'ble Supreme Court in *SBI v. Indexport Registered & Ors.*, [(1992) 3 SCC 159 (Paras 11, 14–19)].
- ii. The Judgment of Hon'ble Supreme Court in *Sita Ram Gupta v. Punjab National Bank & Ors.*, [(2008) 5 SCC 711 (Paras 3–8)].
- iii. The Judgment of Hon'ble Karnataka High Court in *Raju Shetty v. Bank of Baroda*, I.L.R. [1991 KAR 3303 (Paras 9–12)].

11. It is the submission of the Ld. Counsel that the findings in para 18 & 20 of the Impugned Order are factually wrong. In paragraph 18 & 20 of the Impugned Order, the Hon'ble NCLT held that the Appellant relied upon an unsigned sanction letter dated 16.04.2015, which was not even acted upon. The Appellant respectfully submits that this finding is factually incorrect.

The Appellant submitted that his Section 7 petition is not based on the unsigned sanction letter dated 16.04.2015. Instead, the claim is based on the executed loan agreements and corporate guarantees dated 31.12.2011 and 23.02.2012, and on the revival letters dated 31.10.2014 and 03.02.2015, which were duly signed by the Respondent and have not been denied.

12. Ld. Counsel further stated that the Respondent also signed the sanction letters dated 05.02.2013, 31.03.2014, and 27.04.2015. In addition, the borrower signed a balance confirmation dated 21.01.2016, which also carries the signature and seal of the Respondent.

13. Therefore, the findings of the AA is incorrect as the claim is based on signed documents. The reliance on the 16.04.2015 letter by the Tribunal is misplaced and ignores the actual basis of the claim, which rests on executed and admitted documents.

14. The Appellant respectfully submits that the AA failed to consider revival letters and signed sanction documents. The Tribunal did not consider the signed revival letters and sanction letters that clearly acknowledged the Respondent's continuing liability. The Respondent had signed revival letters on 31.10.2014 and 03.02.2015, acknowledging liability for Rs.60 Crores and Rs.40 Crores respectively. The Respondent also signed sanction letters dated 05.02.2013, 31.03.2014, and 27.04.2015, which refer to the continuation of limits. The borrower signed a balance confirmation dated 21.01.2016, and the document bears the Respondent's stamp and signature.

15. These documents were completely overlooked by the Tribunal while concluding that the Appellant was relying on an unsigned sanction letter, which was not the basis of the Section 7 petition at all. The NCLT failed to consider emails sent by the Respondent in September 2021 admitting liability.

16. The Appellant further submits that the Tribunal completely ignored two important emails dated 13.09.2021 and 15.09.2021, in which the Respondent admitted being the corporate guarantor for P.P. Jewellers (Delhi). In these emails, the Respondent clearly requested a statement of outstanding dues so that the account could be settled. These emails are a clear and unambiguous acknowledgment of liability by the Respondent and should have been treated as an admission under Section 18 of the Limitation Act. Despite being material pieces of evidence, these emails were not considered at all in the Impugned Order.

17. RBI Export Credit Circular and findings in para 26 of the Impugned Order are irrelevant to Section 65. The Appellant respectfully submits that the Hon'ble NCLT, in paragraph 26 of the Impugned Order, wrongly interpreted the RBI Circular on Export Credit and held that disbursements made after the sanction period were irregular. It is submitted that RBI's Export Credit Guidelines govern classification of export loans but do not restrict a bank's power to disburse credit under sanctioned facilities. Further, even if there were any alleged irregularity in disbursement, that would not mean that the proceedings under Section 7 were fraudulent or malicious in nature. At best, these are matters of internal banking

policy or regulatory compliance and have no bearing on the maintainability of a Section 7 application. The invocation of Section 65 based on such reasoning is unjustified.

18. The Appellant respectfully submits that the Hon'ble NCLT, in paragraph 27 of the Impugned Order, wrongly concluded that an amount of Rs.22.10 Crores was disbursed after the borrower's account became NPA. This finding is factually incorrect. The Appellant had clearly explained that the amount of Rs.22.10 Crores was not a disbursement but a repayment made by the borrower. This fact is evident from the Company Petition and the Bank Statement dated 10.11.2016. The account number referenced in this repayment is 32234455739, which was not the account operated by e-SBBJ, but rather an account under the merged entity—SBI. The Appellant had submitted all these documents, including the bank statement, showing that the Rs.22.10 Crores was a credit entry and not a disbursement. The NCLT misunderstood this as a loan given post-NPA. Therefore, the Appellant submits that the finding recorded by the Tribunal is based on an incorrect reading of the bank record and deserves to be set aside.

19. The Appellant respectfully submits that in paragraph 31 of the Impugned Order, the Hon'ble NCLT made strong and adverse remarks against the Appellant Bank - such as alleging forum shopping, false statements, and deliberate suppression of facts. These observations were made without issuing any notice to the Appellant or giving it an opportunity to explain or respond to the alleged conduct. It is a settled principle of natural justice that no adverse findings should

be recorded against a party without affording it a reasonable hearing. The Appellant submits that these findings have caused grave prejudice and ought to be expunged on the ground that they were made behind the Appellant's back.

20. In his final submissions Ld. Counsel for the Appellants submits that even if all the complaints and allegations made by the Respondent are considered true, they do not fall within the scope of Section 65 of the IBC. Ld. Counsel stated that Section 65 is applicable only in cases where a party initiates insolvency proceedings with fraudulent or malicious intent - i.e., when there is no real debt or default, and the objective is to harm or harass the opposite party. In the present case, the Appellant is a financial creditor who has placed on record duly executed loan agreements, corporate guarantees, revival letters, balance confirmations, and even subsequent emails from the Respondent acknowledging liability. The borrower account was classified as NPA on 31.12.2015 (by SBI) and 31.03.2016 (by e-SBBJ), and the liability was crystal clear. The mere fact that the borrower later entered into a One-Time Settlement (OTS) and repaid the dues does not mean that the earlier proceedings under Section 7 were fraudulent. Allegations such as improper disbursal, failure to auction mortgaged property, or use of alternate remedies - even if assumed correct - relate to internal banking decisions or commercial conduct. They do not equate to fraudulent or malicious initiation of IBC proceedings. The Appellant submits that these are civil disputes, not matters falling under the purview of Section 65, and therefore the Impugned Order invoking this provision is entirely misplaced.

Submissions of Respondent:

21. The Counsel for the Respondent respectfully submits that this appeal by the State Bank of India (SBI) has no merit. The Hon'ble NCLT, in its order dated 07.10.2024, rightly dismissed the Section 7 application filed by SBI against L.R. Builders Pvt. Ltd. (LRB). The Tribunal also allowed I.A No. 4749 of 2022 under Section 65 of the Code, because SBI had wrongly and dishonestly started insolvency proceedings against LRB, pretending that LRB was a "Corporate Guarantor" for loans actually given to a different firm - P.P. Jewellers (Delhi). The loan of P.P. Jewellers has already been paid off, and SBI has returned both the guarantees and property papers submitted by LRB. Because of this, this Hon'ble Tribunal already dismissed another related appeal (Company Appeal No. 2206 of 2024) filed by SBI on 28.01.2025.

22. The Respondent submits that there is no reason to interfere with the NCLT's finding that SBI acted dishonestly and misused the legal process in view of following reasons:

- i. The Sanction Letter dated 16.04.2015, on which SBI is relying, was never signed by LRB or even by the borrower. It was issued for a different firm, and LRB had no knowledge of it. Therefore, it cannot bind LRB.
- ii. The earlier loan agreements dated 31.12.2011 and 23.05.2012 had expired. Yet, SBI wrongly used them to proceed against LRB.
- iii. SBI gave out new loans even after the loan account had already turned into a non-performing asset (NPA), which was illegal. This clearly shows

collusion between the Bank and one of the borrower's partners, Kamal Kumar Gupta.

- iv. SBI acted unfairly by only going after LRB, while it could have recovered money from the actual borrower or by selling mortgaged property – which would have made better commercial sense.
- v. The Chief Metropolitan Magistrate (CMM) has also noted that some SBI officials were working closely with Kamal Kumar Gupta, partner of the Principal Borrower.

23. The counsel for Respondent submitted that the sanction letter dated 16.04.2015 was relied upon as the basis for starting IBC proceedings against the Respondent. So, the findings from that letter cannot be called irrelevant now for the purpose of seeking expunging of findings by AA.

24. The counsel stated that SBI had relied on the Sanction Letter dated 16.04.2015 in its Section 7 application and arguments before NCLT. SBI had used it to show that the original loan from 31.12.2011 was renewed. But this letter is false and invalid as it is not signed by anyone – neither by the borrower nor by LRB. It clearly mentions that it needs to be signed but was not. Secondly, this was not a renewal, but a fresh sanction, which needed new loan and guarantee agreements. Thirdly, as per SBI, the borrower's partners changed in 2015 – from Kamal and Mukesh Gupta to Rahul and Mukesh Gupta. According to Section 38 of the Indian Partnership Act, this change ended LRB's guarantee.

25. The counsel further submitted inspite of the knowledge about defects in the aforesaid sanction letter, SBI still relied on this document, as otherwise, its case would have been time-barred. SBI now cannot say the letter was never acted upon, just to avoid responsibility.

26. SBI first claimed that the 16.04.2015 letter was a simple renewal. Later, it admitted it was a fresh loan that was never signed. As per law, an agreement that is not signed by the parties is not legally valid. In this regard, Ld. Counsel referred to This has been held in several judgments:

- *Shubhmangal Mercantile (P) Ltd. v. Tricon Restaurants (India) (P) Ltd.*
- *ACE Printing and Pack Pvt. Ltd. v. Modern Food Industries (I)*
- *Ahaar International (India) Ltd. v. Sifter Project Services*
- *Rohit A. Kapadia v. Perviz J. Modi*

Also, SBI used this sanction letter in Form IV and now they cannot say it doesn't matter.

27. The old loan agreement and the guarantee only refer to the 20.12.2011 sanction, which was valid for just 12 months. When SBI realized this, they tried to rely on the 16.04.2015 letter – under which large amounts were disbursed:

Date	Amount
11.01.2016	Rs.3.60 Crores
29.01.2016	Rs.4.00 Crores
17.02.2016	Rs.7.60 Crores
24.02.2016	Rs.1.85 Crores

21.03.2016	Rs.1.70 Crores
25.05.2016	Rs.2.79 Crores
10.11.2016	Rs.22.10 Crores

All this money was given based on that unsigned, invalid letter.

28. The counsel further submitted that the Loan Agreements dated 31.12.2011 and 23.05.2012 clearly state that the credit limits would be governed by the sanction letters.

29. As per RBI's Circular dated 01.07.2014, export credit must be repaid within 180 days and must be within the valid sanction period. It is not treated as a term loan. Export credits cannot be given after the sanction period ends.

The sanction periods are shown below:

Date of Sanction	Validity	Borrowers	Signed by
20.12.2011	Till 22.11.2012	Kamal & Mukesh Gupta	LRB signed
05.02.2013	Till 18.01.2014	Kamal & Mukesh Gupta	LRB signed
12.02.2014	Till 18.01.2015	Kamal & Mukesh Gupta	Not signed by LRB
16.04.2015	Till 24.03.2016	Rahul & Mukesh Gupta	Not signed by anyone

Moreover, the 2015 letter names Rahul and Mukesh as borrowers, but money was disbursed to Kamal and Mukesh. The Bank also added a new guarantor, M/s Vishnu Apparels Pvt. Ltd.

30. Ld. Counsel stated that in Form IV, SBI mentioned that the account became NPA on 31.12.2015, but different dates have been mentioned in other documents like Rejoinder, where it shows different dates like 31.03.2016 or 15.12.2015. As per NCLT Rules and the Supreme Court's decision in *Dena Bank v. Shivkumar Reddy*, such changes can only be made through a formal application – which SBI never filed. So, the NPA date must remain as 31.12.2015.

31. Counsel for the Respondent submits that all the disbursements made from the e-SBBJ account happened after the date the loan account had already become a Non-Performing Asset (NPA). The Bank's own records show that after 16.04.2015, disbursements were made even though the account had already been marked as NPA. The opening credit balance in the account was Rs.27,494.14. This clearly shows that the Bank continued to disburse funds illegally after the default.

32. The counsel further submitted that the Bank was fully aware that the P.P. Jewellers Group accounts had become problematic. As per the Minutes of the Joint Lenders Forum Meeting dated 18.11.2015, the Bank knew that the group accounts had become SMA-2 on 03.11.2015 and would turn into NPAs on 03.12.2015, based on the RBI guidelines. Even after knowing this, SBI still disbursed funds. This meeting was attended by officers of SBBJ and other

banks, and they clearly noted these facts. According to RBI's rule, if an account is overdue for 90 days, it becomes an NPA. Still, the Bank ignored this and acted against the rules.

33. Counsel for the Respondent submits that while explaining the alleged disbursal of Rs.22.10 Crores on 10.11.2016, SBI misled the Ld. Tribunal. SBI referred to additional affidavit filed before NCLT and bank statement of Account No. 32234455739 to claim that Rs.22.10 Crores were disbursed. But this is not true. The documents show that Rs.22.10 Crores were repaid by P.P. Jewellers (Delhi) – not disbursed. The disbursal mentioned in the Impugned Order actually relates to Account No. 36244019723, as shown at Pg. 456 of CP IB 612/2022.

34. That account shows that the Bank received Rs.22.10 Crores and the account balance became zero. So, the question arises – how can insolvency be filed for an account that has zero balance? Also, Form IV does not mention Account No. 32234455739 at all. This is clearly a suppression of facts by the Bank. Even this account had disbursements after the NPA date:

i. Rs.2.80 Crores on 25.05.2016

ii. Rs.9.35 Lakhs on 03.06.2016

35. The counsel further stated that since these issues were not raised before the NCLT, the Bank cannot now bring in a new case or argument before the Appellate Tribunal. It must stick to what was argued earlier.

36. The Counsel for the Respondent submits that SBI also made a false claim before this Hon'ble Tribunal, saying that Account No. 32234455739 belonged to

SBBJ. In truth, this account has always been with SBI, not SBBJ. This fact is proved by the Debit Advice dated 03.05.2012 issued by SBI itself.

37. Counsel for the Respondent submits that M/s P.P. Jewellers Pvt. Ltd., P.P. Jewellers Delhi, and P.P. Jewellers (Exports) are part of one group. Mr. Kamal Gupta is either a partner or Managing Director in all of them. This is confirmed in Form IV. P.P. Jewellers (Exports) was also a guarantor for the loan taken by P.P. Jewellers Delhi, as per the Sanction Letter dated 05.02.2013. This connection is the reason why this group of companies is relevant in the current matter.

38. LRB had given one of its properties as security – the one at H-5, Netaji Subhash Place, New Delhi (called the “NSP Property”). Even though the Bank had this property, it did not go ahead with the auction. The reason given was that Rahul Gupta (who is the son-in-law of Mr. Arjun Kumar) is a director in his father-in-law’s company, and the Bank didn’t want to disturb that company’s business. This is not the Bank’s concern and proves that they were biased. The Bank could have recovered its money from this property way back in 2020, but didn’t – which shows there was collusion.

39. The Bank also gave wrong information about LPA 963/2024. They said it was an appeal from a Writ Petition, which is not true. It was actually filed by SBI to challenge the order dated 20.08.2024 passed in Cont. Cas (C) No. 649/2022, where SBI is named as Contemnor No. 5.

40. The counsel further stated that as the AA noted in Para 24 of the Impugned Order, the Bank’s conduct clearly shows collusion. Even though P.P. Jewellers

Pvt. Ltd. had not followed through with the One-Time Settlement (OTS), the Bank did not file any application to revive the process, even though it was allowed to do so by the order dated 09.01.2023. Also, in Para 31, the Tribunal noted that LRB had offered to sell its Netaji Subhash Place property to clear dues, but SBI refused. Instead, that space was being used by Kamal Gupta to run his showroom. All of this shows that the Bank was acting maliciously and did not want to recover its dues fairly.

41. Counsel for the Respondent submits that this isn't just an allegation. The Chief Metropolitan Magistrate (CMM) has clearly recorded findings in two separate orders dated 19.08.2020 and 04.06.2022 showing that some SBI officials were working hand-in-glove with Kamal Gupta, the partner of the main borrower.

42. After the Respondent brought these findings before the NCLT, the Bank hurriedly filed two Writ Petitions – WP(C) 6991/2024 and WP(C) 7017/2024 – before the Hon'ble Delhi High Court, asking that the adverse remarks be removed.

Analysis and findings

43. We have heard the parties in detail, examined the record, and considered the documents presented and have gone through the written submissions of both the parties.

44. The Respondent, L.R. Builders Pvt. Ltd., filed a petition I.A. No. 4749/2022 under Section 65 of IBC in C.P. (IB) No. 612/2022 before the Adjudicating Authority (NCLT) alleging that the State Bank of India had initiated CIRP

proceedings with mala-fide intent, fraudulently misrepresenting facts, and abusing the insolvency process. These allegations formed the foundation for the NCLT's impugned order dated 07.10.2024, whereby the Section 7 petition filed by SBI in C.P. (IB) No. 612/2022 was dismissed and I.A. No. 4749/2022 under Section 65 was allowed. By the impugned order, the Adjudicating Authority concluded that the application was filed fraudulently and with malicious intent, constituting an abuse of the insolvency process.

45. The Appellant, State Bank of India (SBI), has raised serious concerns regarding the NCLT's order, which dismissed its application under Section 7 of the IBC and passed adverse remarks against the Bank in the process. Specifically, SBI argues that the findings recorded by the NCLT are factually incorrect, legally unsustainable, and that the impugned order lacks adequate reasoning and fails to consider essential material placed on record. Further, it is alleged that the NCLT violated basic principles of adjudication by not properly applying its mind to the facts and legal framework.

46. The AA's findings were primarily based on two key assumptions: (a) that the Appellant had relied upon an unsigned and unacted-upon sanction letter dated 16.04.2015, and (b) that a sum of Rs.22.10 Crores was disbursed to the borrower after the loan accounts were declared NPA, thereby indicating suppression of facts and collusion on part of the Bank. These findings led the Adjudicating Authority to record serious adverse observations against SBI, including accusations of forum

shopping, suppression of material facts, deliberate misuse of legal process, and lack of bona fides — particularly in paragraphs 16 to 31 of the impugned order.

47. To determine whether these allegations are justified, it is necessary to examine the background of transactions between the borrower and the Bank, the execution and reaffirmation of guarantees, and the events leading up to the initiation of CIRP.

48. On 31.12.2011, the erstwhile State Bank of Bikaner and Jaipur (e-SBBJ) sanctioned a term loan of Rs.60 Crores to the borrower M/s P.P. Jewellers (Delhi), a partnership firm. On the same date, the Respondent executed a corporate guarantee in favour of e-SBBJ, securing the said facility. Subsequently, on 23.02.2012, the Appellant (SBI) sanctioned a working capital loan of Rs.40 Crores to the same borrower. The Respondent once again executed a separate corporate guarantee in favour of SBI on the same day, independently securing this second facility.

49. Respondent stated that SBI had relied on the Sanction Letter dated 16.04.2015 in its Section 7 application and arguments before NCLT. SBI had used it to show that the original loan from 31.12.2011 was renewed. But this letter is false and invalid as it is not signed by anyone – neither by the borrower nor by LRB. It clearly mentions that it needs to be signed but was not. Secondly, this was not a renewal, but a fresh sanction, which needed new loan and guarantee agreements. Accordingly, he pleaded that there is Novation of Contract which would have required separate Guarantee Agreements and existing guarantee would become void.

50. We have gone through the records. Part IV of the Form – filed under section 7 mentions the Agreement dated 16.04.2015 also as one of the documents in addition to other loan agreements. It is the submission of the Appellant that it's a clerical error. The aforesaid agreement was never signed and implemented by the Appellant. So, the question of Novation of Guarantee Agreement does not arise at all.

51. The record contains several documents that reaffirmed the Respondent's liability. The facilities were renewed through sanction letters dated 05.02.2013, 31.03.2014, and 27.04.2015 — all signed by the Respondent. In addition, the Respondent signed revival letters on 31.10.2014 (for the Rs.60 Crores facility) and 03.02.2015 (for the Rs.40 Crores facility), thereby extending the limitation period and confirming the existing liabilities. On 21.01.2016, the borrower executed a balance confirmation that also bore the Respondent's stamp, reaffirming acknowledgment of the outstanding dues.

52. After the accounts turned irregular, the borrower's account was declared a Non-Performing Asset (NPA) by SBI on 31.12.2015 and by e-SBBJ on 31.03.2016. The Bank initiated proceedings under the SARFAESI Act, including the issuance of demand notices under Section 13(2) and symbolic possession under Section 13(4). Simultaneously, the Bank also filed recovery proceedings before the Debt Recovery Tribunal — OA No. 634/2016 and OA No. 364/2016 — to recover the guaranteed dues.

53. We find that the AA while examining the issue of default had listed seven entries of credit in the e-SBBJ account of the borrower and recorded that these

amounts were disbursed after the date of default i.e. 31.12.2015. It is an admitted position that the date of declaration of NPA in case of e-SBBJ is 31.03.2016. This has been admitted by the Respondent in their rejoinder filed in I.A. No. 4749/2022 in CP (IB) No. 612/2022. Relevant portion of para 21 is extracted below:

“The loan account maintained by SBI was declared NPA on 15.12.2015 and the account maintained with SBBJ was declared NPA on 31.03.2016.”

54. In the alleged disbursements made by the appellant relating to the A/c No. 32234455739 maintained by the Borrower with SBBJ (now SBI), only two entries were made after the account was declared NPA on 31.03.2016, and a detailed explanation for these two entries was submitted by the Bank before the Adjudicating Authority, though it was not taken into consideration. Of the alleged disbursements, the amount of Rs. 2.79 crore on 25.05.2016 was an Export Packing Credit (EPC), a pre-shipment facility credited directly to the exporter on behalf of the Borrower, not a disbursement to the Borrower; upon non-repayment, the EPC was crystallised on 03.06.2016. The amount of Rs. 22.10 crore on 10.11.2016 was also not a fresh disbursement, but an internal adjustment made by SBI to close A/c No. 32234455739 by crediting and debiting the same amount in another account of the Borrower (A/c No. 00000036244019723), as seen in both accounts.

55. Despite this clear documentary explanation submitted in the rejoinder and written submissions, the NCLT failed to pay attention to this material

evidence. The NCLT thus wrongly concluded that an amount of Rs.22.10 Crores was disbursed after the loan account turned Non-Performing Asset (NPA). We observe that disbursement post declaration of account as NPA was one of the reasons cited by AA for allowing the Section 65 petition. This finding was not based on correct understanding of nature of entries in the bank account of borrower maintained in e-SBBJ.

56. The Respondent has further submitted that the period of original sanction of loan was for one year from 31.12.2011 and the guarantee was valid for the same period. In such a situation, the respondent cannot be liable for the outstanding loan amount.

57. The liability of the guarantor in this case is governed by clauses of the guarantee agreement and admission if any by the respondent. We now have a look at relevant clauses Nos. 1, 3, 6, 8, 9, 11, 14, 18 and 19 Deed of Guarantee dated 31.12.2011 executed by respondent with e-SBBJ for the credit limit of Rs. 60 crores:

“1. If at any time default shall be made by the Borrower in payment of the principal sum (not exceeding Rs. 60,00,00,000/-) together with interest, costs, Charges, expenses and/or other monies for the time being due to the Bank in respect of or under the aforesaid credit facilities or any of them the Guarantors shall forthwith on demand pay to the Bank the whole of such principal sum (not exceeding Rs. 60,00,00,000 -) together with interest, costs, charges, expenses and/ or any other monies as may be then due to the Bank in respect of the aforesaid credit facilities and shall indemnify and keep indemnified the Bank against all losses of the said principal sum, interest or other monies due and all costs charges and expenses whatsoever*

which the Bank may incur by reason of any default on the part of the Borrower.

3. The Bank shall have the fullest liberty without affecting this Guarantee to vary the amounts of the individual limits of the aforesaid credit facilities as may be agreed upon from time to time between the Bank and the Borrower subject to the aggregate thereof not exceeding the principal sum and/or to postpone for any time or from time to time enforce or forbear to enforce any remedies of securities available to the Bank of its liberty with reference to the matters aforesaid or any of them or by reason of time being given to the Borrower or of any other forbearance act or omission on the part of the Bank or any other indulgence by the Bank to the Borrower or by any other matters or things whatsoever which under the law relating to sureties would but for this provision have the effect of so releasing the Guarantors.

6. The Guarantee herein contained shall be enforceable against the Guarantors notwithstanding the security aforesaid or any of the them or any other collateral securities that the Bank may have obtained or may obtain from the Borrower or any other person shall at the time when proceedings are taken against the Guarantors hereunder be outstanding and/or not enforced and/or remain unrealized.

8. The guarantee herein contained is a continuing one for all amounts advanced by the Bank to the borrower in respect of or under the aforesaid credit facilities as also for all interest caused and other monies which may from time to time become due and remain unpaid to the bank thereunder and shall not be determined or in any way be affected by any account or accounts opened or to be opened by the bank becoming nil or coming into credit at any time or from time to time or by reason of the said account or accounts being closed and fresh account or accounts being opened in respect of fresh facilities being granted within the overall limit sanctioned to the borrower.

9. *Notwithstanding the Bank's rights under any security which the Bank may have obtained or may obtain the Bank shall have fullest liberty to call upon the Guarantors to pay the principal sum not exceeding Rs. 60,00,00,000/- (Rupees Sixty Crores only) together with interest as well as the costs (as between advocate and client) charges and expenses, and/or other monies for the time being due to the Bank in respect of or under the above-mentioned credit facilities or any of them without requiring the Bank to realize from the Borrower the amount due to the Bank in respect of the above-mentioned credit facilities and/or requiring the Bank to enforce any remedies or securities available to the Bank.*

11. *The guarantee shall be irrevocable and enforceable against the Guarantors notwithstanding any dispute between the Bank and the Borrower.*

14. *The Guarantors hereby agree that notwithstanding any variation made in the terms of the said Agreement of Loan and/or any of the said security documents including reallocation/interchange of the individual limits within the principal sum variation in the rate of interest, extension of the date for payment of the instalments, if any, or any composition made between the Bank and Borrower to give time to or not to sue the Borrower, or the Bank parting with any of the securities given by the Borrower, the Guarantors shall not be released or discharged of their obligation under this Guarantee provided that in the event of any such variation or composition or agreement the liability of the Guarantors shall notwithstanding anything herein contained be deemed to have accrued and the Guarantors shall be deemed to have become liable hereunder on the date or dates on which the Borrower shall become liable to pay the amount/amounts due under the said Agreement of Loan and/or any of the*

said security documents as a result of such variation or composition or agreement.

18. The Guarantee hereby given is independent and distinct from any security that the Bank has taken or may take in any manner whatsoever whether it be by way of hypothecation pledge and/or mortgage and/or any other charge over goods, movables or other assets and/or any other property movable or Immovable and that the Guarantors have not given this guarantee upon any understanding faith or belief that the Bank has taken and/or may hereafter take any or other such security and that notwithstanding the provisions of Sections 140 and 141 of the Indian Contract Act, 1872 or other section of that Act or any other law, the Guarantors will not claim to be discharged to any extent because of the Bank's failure to take any or other such security or in requiring or obtaining any or other such security or losing for any reason whatsoever including reasons attributable to its default and negligence benefit of any or other such security or rights to any or other such security that have been or could have been taken.

19. The Guarantors agree that any admission or acknowledgment in writing signed by the Borrower of the liability or indebtedness of the Borrower or otherwise in relation to the above mentioned credit facilities and/or any part payment as may be made by the Borrower towards the Principal, sum hereby guaranteed or any judgement, award or order obtained by the Bank against the Borrower shall be binding on the Guarantors and the Guarantors accept the correctness of any statement of account that may be served on the Borrower which is duly certified by any officer of the Bank and the same shall be binding and conclusive as against the Guarantors also and the

Guarantors further agree that in the Borrower making an acknowledgment or making a payment the Borrower shall in addition to his personal capacity be deemed to act as the Guarantors duly authorised agent in that behalf for the purposes of Sections 18 and 19 of the Limitation Act of 1963.”

(Emphasis supplied)

58. We can see from the above Clause 1 specifies that liability is payable on demand. Clause 3 gives the freedom to Bank to change the borrowing limits and such changes would not have effect of releasing the guarantee provided under this agreement. Clause 6 makes the guarantee enforceable against all guarantors jointly and severally. Clause 8 mandates that the guarantee is continuing in nature. Clause 9 states that the Bank may at its discretion demand the principal and interest from the guarantors. Clause 11 points out that the guarantee is irrevocable. Clause 14 states that Guarantors' liability continues despite any changes in loan terms or arrangement between the Bank and the Borrower. Clause 18 states that guarantee is independent of borrower liability. Clause 19 confirm that the acknowledgments by borrower bind the guarantor.

59. We can see from the aforesaid clauses of the deed of guarantee that it is a independent and comprehensive document, which once executed remains binding on guarantors till such time, the credit facility under reference is fully discharged.

60. The AA fails to consider any of these clauses, nor does it apply the settled law under Section 128 of the Indian Contract Act, 1872, or the binding ratio of the Hon'ble Supreme Court in *Lalit Kumar Jain v. Union of India*, (2021) 9 SCC 321, which upholds the liability of guarantors under the IBC. Instead, the order

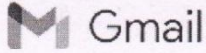
incorrectly quotes a clause from the loan agreement (Clause 8) as if it were part of the guarantee deed thereby demonstrating a fundamental factual error.

61. Respondent has accepted its liability in several documents over a period of time. These documents are listed below:

- Sanction letters dated 05.02.2013, 12.02.2014, 31.03.2014, and 27.04.2015, duly signed by the Respondent;
- Revival letters dated 31.10.2014 (Rs.60 Cr loan) and 03.02.2015 (Rs.40 Cr loan);
- A balance confirmation dated 21.01.2016 bearing the Respondent's stamp and signature.

These acknowledgments continued well beyond the alleged date of default and well into the limitation period.

62. We further observe that the respondent has admitted its liabilities as guarantor in 2021 and engaged with Bank to ascertain exact amount of dues. Respondent vide emails dated 13.09.2021 and 15.09.2021 admitted its position as Corporate Guarantor and requested SBI to share the current statement of dues to enable it to repay the same. These communications constitute acknowledgment under Section 18 of the Limitation Act, 1963, and reaffirm that the liability was still subsisting as of 2021. The copies of the emails are extracted below:



ANNEXURE-2

LR Builders <lrbuildersho@gmail.com>

REQUEST TO PROVIDE THE STATEMENT OF ACCOUNT

LR Builders <lrbuildersho@gmail.com>

Mon, Sep 13, 2021 at 5:34 PM

To: AGMCL404109 <team4samb1.del@sbi.co.in>, SBI 4109 <sbi.04109@sbi.co.in>, AGMCL2 04109 <team2samb1.del@sbi.co.in>, agmcl2.04109@sbi.co.in, Agm2others1 Sarg <agm2others1.sarg@sbi.co.in>, sbi.404109@sbi.co.in

To,
Mr Sudhir Kumar,
Assistant General Manager,
State bank of India,
Stressed Assets Management Branch
10th Floor, Jawahar Vyapar Bhawan,
1, Tolstoy Rd, New Delhi- 110001

Mr Uttara Mahto,
Chief Manager,
State bank of India,
Stressed Assets Management Branch
10th Floor, Jawahar Vyapar Bhawan,
1, Tolstoy Rd, New Delhi- 110001

Respected Sir/Mam,

The undersigned is the Director of M/s L R Builders Pvt Ltd. Our Company had provided the corporate guarantee for the credit facility availed by M/s P P Jewellers (Delhi).

It is requested to kindly confirm that the date on which payment of the OTS as referred in order dated 06.03.2020 in OA 364 of 2016 in the above mentioned loan account was received.

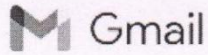
Therefore, being a guarantor I want to know the exact pending amount of the loan which is required to be paid by PP Jewellers Delhi for clearing the outstanding.

Thus, it is requested to kindly provide the Statement of Account of the aforementioned loan account.

I request you with folded hands to acknowledge the receipt of the same and provide the requisite document.

Thanks & Regards

L R Builders Pvt Ltd



LR Builders <lrbuildersho@gmail.com>

REQUEST TO PROVIDE THE STATEMENT OF ACCOUNT

LR Builders <lrbuildersho@gmail.com>

Wed, Sep 15, 2021 at 6:25 PM

To: AGMCL404109 <team4samb1.del@sbi.co.in>, SBI 4109 <sbi.04109@sbi.co.in>, AGMCL2 04109 <team2samb1.del@sbi.co.in>, agmcl2.04109@sbi.co.in, Agm2others1 Sarg <agm2others1.sarg@sbi.co.in>

REMINDER 1

To,
Mr Sudhir Kumar,
Assistant General Manager,
State bank of India,
Stressed Assets Management Branch
10th Floor, Jawahar Vyapar Bhawan,
1, Tolstoy Rd, New Delhi- 110001

Mr Uttara Mahto,
Chief Manager,
State bank of India,
Stressed Assets Management Branch
10th Floor, Jawahar Vyapar Bhawan,
1, Tolstoy Rd, New Delhi- 110001

Respected Sir/Mam,

The undersigned is the Director of M/s L R Builders Pvt Ltd. Our Company had provided corporate guarantee for the credit facility availed by M/s P P Jewellers (Exports).

It is requested to kindly confirm all the dates on which payment of the OTS dated 20.10.2020 in aforementioned loan account was received.

Thus, it is requested to kindly provide the Statement of Account of aforementioned loan account.

I request you with folded hands to acknowledge the receipt of the same and provide the requisite document.

Thanks & Regards

L R Builders Pvt Ltd

63. This clearly show that the Respondent was still accepting its role as guarantor and acknowledging the debt even years after the so-called first default. As per Section 18 of the Limitation Act, such acknowledgments restart the limitation period. Legally, a party cannot on one hand plead that the debt is barred by limitation based on an earlier default, and on the other hand engage in subsequent acknowledgments and communications that reaffirm its liability. The conduct of the Respondent shows that the guarantee obligation was treated as ongoing and enforceable after the first disbursal.

64. We also note that the NCLT, in the impugned order, did not examine this contradiction or consider the legal effect of these differing statements. It simply proceeded to record adverse findings against SBI without resolving this material inconsistency in the Respondent's own pleadings.

65. In view of this, the Tribunal finds that the Respondent's own conduct — in continuing to acknowledge the debt while giving conflicting dates of default — further supports the Appellant's case. It shows that the guarantee obligation was alive and continuing, and that the application under Section 7 was based on a valid and enforceable claim.

66. The AA referred to L.A. No. 752 of 2020 filed before the Debt Recovery Tribunal (DRT) in O.A. No. 298 of 2017 against PP Jewellers (Exports). That application was filed by the Respondent to request the Bank to sell the mortgaged property at H-5, Wazirpur District, Netaji Subhash Place, Pitampura, New Delhi, through public auction and also to remove the Respondent's name from the list of parties. The above case relates to PP Jewellers (Exports) who is not a party in

the present case and should have no bearing to the findings in the present case. Further, the account of PP Jewellers (Exports) has already been closed by the Bank in 2020 and should not have any bearing on the findings of the instant case.

67. It is also seen that AA has also relied on an order dated 19.08.2020 passed by the Chief Metropolitan Magistrate (CMM), North-West, Rohini Courts in “State Bank of India v. P.P. Jewellers Exports and Ors.” in Ct. Case No. 22327 of 2019. This case again relates to PP Jewellers (Exports) and the said account has already been closed by the Bank in 2020 itself.

68. The aforesaid matter relating to PP Jewellers (Exports) has been cited by the AA to establish the nexus between Bank and the borrower. This finding was made without properly considering the important facts and documents placed on record that the matter related to another company of the same group and is not relevant to the present matter. The conclusion drawn by AA is not supported by facts.

69. The Respondent had earlier filed FIR No. 106/2022 under Sections 409 and 120B of the IPC against SBI officials, alleging criminal breach of trust and conspiracy. The AA also noted that an FIR had been filed by the Respondent against Bank officials alleging collusion. However, it failed to take into account that FIR No. 106 of 2022, registered under Sections 409 and 120B of the Indian Penal Code, was quashed by the Hon’ble Delhi High Court in the matter of ‘*Sudhir Kumar & Ors. vs. State of NCT of Delhi & Ors.*’ on 30.08.2024 in W.P. (Crl.) 2152/2022.

70. The Hon'ble Delhi High Court in its Judgment (supra) clearly stated that the FIR had no merit, was not maintainable, and was a clear misuse of the legal process. The relevant findings of the Hon'ble High Court in the Judgment (supra) are in paras 2, 35, 36, 41, 46 and 50. The same are extracted below:

"2. Shorn of unnecessary details, factual matrix to the extent necessary and as averred in the writ petition is that Petitioners No. 1 and 2 are the Assistant General Managers of State Bank of India ('SBI) and Petitioner No.3 is the Chief Manager. Respondent No.2/LR Builders Pvt. Ltd. is the guarantor in the loans advanced by SBI to two Partnership concerns M/s. P.P. Jewellers (Exports) and M/s. P.P. Jewellers (Delhi). Both the Partnership Firms belong to the family of Kamal Kumar Gupta. In M/s. P.P. Jewellers (Exports), Kamal Kumar Gupta is a Partner with his wife Veena Gupta and in M/s. P.P. Jewellers (Delhi), Kamal Kumar Gupta is a Partner with his relative Mukesh Gupta. Respondent No.2 is promoted and managed by the family of Kamal Kumar Gupta. Rahul Gupta/ Respondent No.3 is one of the Directors of Respondent No.2 and is the person who filed the criminal complaint as well as the application under Section 156(3) Cr.P.C. on behalf of Respondent No.2.

35. There is thus wealth of judicial precedent which fortifies the stand of the Petitioners that in the mercantile system, Banks have a general lien over all forms of securities or negotiable instruments deposited by or on behalf of the customers in the ordinary course of banking business and the general lien is a valuable right of the banker judicially recognized and in the absence of an agreement to the contrary, Banker has a general lien over such securities or bills received from a customer in the ordinary course of banking business and has a right to use the proceeds in respect of any balance that may be due from the customer by way of reduction of customer's debit balance. In the instant case, SBI has exercised lien over the subject property pending the recovery of Loan-I and Loan-II invoking Section

171 of the 1872 Act and was justified in doing so and Petitioners cannot be faulted, least of all accused for criminal misappropriation for their actions in refusing to release the title deeds, acting in their capacity as Bank officials. Additionally, it was confirmed on behalf of Respondent No.2, while creating the mortgage through its letter dated 12.09.2007 that the security by way of mortgage of the subject property shall be security for all other liabilities and indebtedness past, present and future to the Bank, notwithstanding new limits and facilities etc. and cannot now turn around and seek release of the title deeds once the dues are outstanding to the Bank under two separate loans. It is also important to note that when OTS 2020 was entered between Mis. P.P. Jewellers (Exports), Kamal Kumar Gupta and Veena Gupta, Clause No.4 was incorporated, whereby it was undertaken that collateral security offered by Respondent No.2 for credit facilities of Ms. P.P. Jewellers (Exports) would not be released after settlement under OTS since corporate guarantee of Respondent No.2 had been extended for credit facilities of M/s. P.P. Jewellers (Delhi) against which Bank had filed recovery suits in DRTs.

36. Respondent No.2 through Rahul Gupta is now seeking to distance itself by urging that the corporate guarantee by mortgaging the subject property was with respect to the loan of Rs.56 Crores, which was settled and paid off and the property has nothing to do as a security for the other two loans. In fact, the allegation levelled in the FIR is that Kamal Kumar Gupta is in hand and gloves with the Bank officials and all are conniving to usurp the subject property. This argument is wholly misconceived and cannot be accepted firstly, for the reason that the Bank has a right in law to exercise lien with respect to all loan accounts taken by the borrowers in which Respondent No.2 is a guarantor and secondly, Rahul Gupta is the son of Kamal Kumar Gupta and Veena Gupta and all three are Directors of Respondent No.2. Further, Pawan Gupta who is the paternal uncle of Rahul Gupta is also a Director of Respondent No.2 and Kamal Kumar Gupta, Veena Gupta and Pawan Gupta as well as Respondent No.2 are guarantors

in the account of M/s. P.P. Jewellers (Delhi). Therefore, initiating criminal proceedings against the Petitioners through the mode of an FIR is nothing but a desperate attempt to seek release of title deeds of the mortgaged subject property, which Respondent No.2 and the borrowers have been unable to achieve despite several attempts before the MM, this Court and the DRT/DRAT and for the sake of completeness, it would be useful to refer to the litigation in this context hereinafter.

41. Petitioners have also contended and in my view rightly so, that the issues arising inter se the parties are essentially civil in nature and various OAs in this regard are pending before the DRTs and thus criminal proceedings are an abuse of process of law. SBI has stay orders in its favour in respect of the subject property in both the OAs filed against M/s. P.P. Jewellers (Delhi). In this light, the contention is well founded that this Court ought to exercise its inherent power under Section 482 Cr.P.C. and quash the FIR and the criminal proceedings arising therefrom. The law on this issue is also no longer res integra.

43. Applying the aforesaid judgments to the facts of this case, the question is whether the disputes between the parties are civil disputes, which have been given a complexion of criminal culpability and the answer in my view, is in the affirmative. The transactions are purely commercial transactions where the Bank advanced some loans to the borrowers and Respondent No.2 gave corporate guarantee by mortgaging properties including the subject property. Bank exercised lien on the subject property in view of outstanding dues against two loans and the matters are pending before the appropriate forums, Le. DRTs. The allegations in the FIR centre around the discharge of the liability of a corporate guarantor and release of the title deeds of the mortgaged property. To my mind, this is essentially a civil dispute. It cannot be overlooked that the Bank has filed two suits of recovery pertaining to Loan-I of Rs.40 Crores and Loan-II of Rs.60 Crores and both OAs are pending. Respondent No.2 and Respondent No.3 have

made several unsuccessful attempts for release of the title deeds on the grounds, which are identical to the allegations in the FIR. DRTs being the forums of competent jurisdiction are ceased of the disputes and as and when the proceedings conclude, it will be decided whether the title deeds have to be released or not depending on the outcome of the OAs, in light of various factors, such as the lien exercised by the Bank under Section 171 of 1872 Act, outstanding liabilities of the borrowers, liability of Respondent No 2 as well as Respondent No.3 as a director of Respondent No.2 etc. One of the contentions raised on behalf of Respondent No.2 is that Clause 4 was unilaterally incorporated in OTS 2020, whereby it was agreed that collateral security offered by Respondent No.2 for the credit facilities of M/s P.P. Jewellers (Exports) would not be released under OTS 2020 since corporate guarantee of Respondent No.2 also extended to credit facilities of Mis. P.P. Jewellers (Delhi). This dispute is admittedly pending before the DRT in IA No. 1561/2020 and vide order dated 16.12.2020, DRT directed that this issue will be subject to outcome of the I.A. Being aware of the pendency of all these disputes before the DRTs and significantly being party to the disputes, Respondent No.2 through Respondent No.3 maliciously chose to resort to criminal proceedings and the police also registered the FIR entering into the arena of a civil dispute which is beyond their domain and jurisdiction. In my view, the disputes being essentially of a civil nature and being sub-judice before the DRTs, it would be an abuse of the process of law if the criminal proceedings continue against the Petitioners.

46. In the instant case, the essential ingredients of Section 405 IPC are not made out. Petitioners are merely acting as officials of the Bank in their official capacity. Bank has retained the title deeds in exercise of its right of lien, which it is entitled to do in law. Even going by the contents of the FIR. it is not the case of Respondent No.2 that Petitioners have misappropriated the title deeds in any manner. The subject property has not been sold by the Bank and title deeds are simply retained. Petitioners are not accused of selling away the

property and taking away the sale proceeds or putting the property to any personal use or for any personal gain. Therefore, applying the principles laid down by the Supreme Court, there is no misappropriation of the property entrusted to the Bank and the FIR deserves to be quashed.

50. Applying the aforesaid principles to the facts of the present case, in my view, the criminal proceedings initiated against the Petitioners are an abuse of the process of the Court and it would secure the ends of justice if the FIR is quashed and criminal proceedings are terminated. Accordingly, the writ petition is allowed and FIR No. 106/2022, registered on 26.08.2022 under Sections 409/ 120B IPC at PS: Barakhamba Road, against the Petitioners herein is hereby quashed along with the proceedings emanating therefrom.”

71. It is important to note that the Judgment of Hon’ble High Court was based on same factual matrix as in the present case. The Hon’ble Court examined all the claims and counter claims of SBI and LR Builders including the proceedings in Debt Recovery Tribunals. The Hon’ble Court specifically held that the dispute between the parties was of civil nature and the criminal complaint which was filed by Sh. Rahul Gupta a Director of LR Builders (Respondent) was a gross misuse of criminal process. The Hon’ble Court also passed adverse comments against the officers of Delhi Police for entertaining such complaints. The Hon’ble Court did not find any wrong doing on the part of SBI officials rather it stated that the criminal proceedings were malicious and were launched with the intention to harass public servants who were trying to discharge their duty.

72. We also note that Hon’ble High Court observed that the FIR was vague and based on conjecture and surmise. There was no prima facie case of criminal

wrongdoing or conspiracy made out. The allegations pertained to banking decisions and recovery efforts taken by officials of a public sector bank. The High Court specifically held that public servants discharging their official functions in the recovery of public dues cannot be subjected to criminal prosecution unless a clear, wilful, and mala fide intent is established, which was not the case here.

73. In *State of Haryana v. Bhajan Lal* (1992 Supp (1) SCC 335), the Hon'ble Supreme Court clarified that where an FIR is quashed for being baseless, no legal consequence can be attached to its contents or to proceedings that relied upon it. Moreover, SBI officials fall within the category of public servants. The Hon'ble High Court's reasoning in W.P. (CRL) 2152/2022 clearly relied on established jurisprudence, including the protection afforded under Section 197 CrPC, which requires sanction before prosecuting public officials for acts done in the discharge of official duties.

74. The Hon'ble Supreme Court, in *Union of India v. P. Venugopal* (2008) 5 SCC 1, held that remarks against public servants must not be made lightly, especially when they affect public confidence in the system.

75. We note that the aforesaid Judgment of Hon'ble Delhi High Court was brought to the notice of NCLT by the Appellants, but the same has not been considered by the AA while passing their impugned order. By continuing to draw adverse inferences based on a criminal proceeding that had been judicially annulled, the AA committed a grave legal error.

76. We further note that the Respondent, L.R. Builders Pvt. Ltd., has admitted before the Hon'ble Delhi High Court that it has no grievance against the State

Bank of India or its officers. This statement was made during the hearing of LPA No. 236/2024, and was recorded in the Court's order dated 10.12.2024. The aforesaid order of Hon'ble Court is extracted below:

ANNEXURE-5

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 236/2024, CM Nos.17775/2024, 17776/2024, 17777/2024 & 17778/2024

STATE BANK OF INDIA

....Appellant

Through: Mr. Ankur Mittal & Ms. Ikshita Parihar, Advs.

Versus

LR BUILDERS PVT. LTD.

.....Respondent

Through: Mr. Akhil Sibal, Sr. Adv. with Mr. Shivek Trehan & Ms. Bhumika Popli, Advs.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

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10.12.2024 ,

1. Mr. Akhil Sibal, the learned senior counsel appearing for the respondent submits that its grievance against the appellant is fully addressed and the respondent does not wish to press the W.P.(C) No. 3158/2024 insofar as it concerns the appellant. He further states that the respondent shall move an application before the learned Single Judge for deleting the appellant from the array of parties.

2. In view of the above, the learned counsel appearing for the appellant does not press the present petition. The same is, accordingly, disposed of. All pending applications are also disposed of.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

DECEMBER 10, 2024

'gsr'

[Click here to check corrigendum, if any](#)

77. In W.P. (C) No. 3158/2024 referred above, the Respondent herein had alleged that the SBI (Respondent No. 2 in the aforesaid writ petition) had colluded with Directors of M/s PP Jewellers Delhi and it is actively involved with borrowers helping them siphon the public money.

78. In order pertaining to LPA No. 236/2024, the Respondent clearly told the Court that it did not wish to pursue any complaint or allegation against the Bank. This was after the same issues had earlier been raised in FIR No. 99/2019 and before the High Court in connected matters.

79. This admission is important because the Respondent cannot now claim - in the present proceedings that the appellant SBI acted with bad faith or filed the insolvency application with malicious intent. Once a party tells the High Court that it has no grievance, it cannot change its stand and make opposite claims in another forum on the same facts.

80. We find that contrary to the assertion of fraud by officials of SBI, the conduct of LR Builder/ Respondent herein are malafide and aimed to harass the public servants, who were performing their duties diligently by trying to recover public funds. The Respondent had filed criminal cases against the bank officials for their actions, which fall within the sphere of their prescribed duties. Even after admitting before the Hon'ble Delhi High Court that they have no grievances qua SBI, they have continued to pursue this appeal vehemently. This clearly reflects the malafide on their part.

81. The allegations of forum shopping, collusion, and abuse of process have been made against SBI- a nationalised bank acting under statutory banking regulations and guidelines of the Reserve Bank of India (RBI). Upon careful scrutiny of the record, we find that the AA has reached its conclusion about fraud and collusion without in-depth examination of documents on record, some important documents like the Judgment quashing the FIR against SBI officials has not been considered, while matters relating to other companies which are not impacting this matter have been considered to reach the finding of fraud under Section 65 of the Code. The AA's order casts aspersions on the institutional integrity of a public body engaged in lawful debt recovery.

82. The Hon'ble Supreme Court's in '*Kranti Associates v. Masood Ahmed Khan*' [(2010) 10 SCR 1070], held that judicial orders must be reasoned, reflecting the Tribunal's application of mind to the facts and legal principles involved. The NCLT's order fails to critically examine the material evidence available and has based its findings on issues not directly related to the present case, which violates this fundamental requirement.

83. In view of these findings, we hold that the impugned order passed by the Ld. NCLT on 07.10.2024 is based on incorrect facts, a misreading of the evidence, and fails to critically examine the issues. The NCLT's failure to provide adequate reasoning, consider all relevant material, and apply basic principles of natural justice renders the order invalid.

84. In view of the above findings, we allow the appeal and set aside the order passed by Ld. NCLT, Delhi (Bench-III) in I.A. No. 4749/2022 in C.P. (IB) No. 612/2022. There will be no order as to costs. Pending I.As, if any, are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Indavar Pandey]
Member (Technical)