



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No. 9701 of 2024

UV Asset Reconstruction Company Limited ... Appellant

Versus

Electrosteel Castings Limited ... Respondent

J U D G M E N T

ALOK ARADHE, J.

INTRODUCTION

1. This appeal under Section 62 of Insolvency and Bankruptcy Code, 2016 (hereinafter, referred to as the 'Code') calls in question the legality and correctness of the judgment dated 24.01.2024 by the National Company Law Appellate Tribunal (NCLAT), whereby, the NCLAT affirmed the order dated 24.06.2022 passed by the Adjudicating Authority (NCLT) rejecting the application filed by the appellant under Section 7 of the Code.

(ii) ISSUE

2. The central issue arising for consideration in the present appeal pertains to the interpretation of Clause 2.2 of Deed of Undertaking dated 27.07.2011 executed between SREI

Infrastructure Finance Limited (SREI), the original creditor, which subsequently assigned all its rights and interests in favour of UV Asset Reconstruction Company Limited, the appellant; Electrosteel Steels Limited (ESL), the borrower; and Electrosteel Castings Limited (ECL), the erstwhile promoter of ESL and obligor in the Deed of Undertaking. The Controversy lies in determining whether said Clause constitutes a contract of guarantee within the meaning of Section 126 of the Indian Contract Act, 1872 (Act) thereby rendering ECL as a guarantor to SREI in respect of financial facilities availed by ESL from SREI.

(iii) FACTUAL BACKGROUND

3. Briefly stated, the facts leading to filing of present appeal, are as follows. ESL availed financial assistance of INR 500 crores from SREI pursuant to sanction letter dated 26.07.2011. Under the sanction letter, the only security for the facility comprised a demand promissory note and post-dated cheques. The sanction letter did not stipulate any requirement for a personal or corporate guarantee from the ECL. However, ECL being the promoter of ESL was required to furnish an undertaking to arrange for the infusion of funds.

- 4.** On the same day, SREI issued an addendum to the sanction letter, providing for an additional security for the facility in the form of subservient charge over movable and project assets of ESL. On 26.07.2011 itself, SREI and ESL executed a Rupee Loan Agreement. Clause (d)(3) of schedule 4 to the loan agreement, required the ECL to furnish an undertaking to arrange for infusion of funds to enable ESL, to comply with financial covenants.
- 5.** In pursuance thereof, ECL, one of the promoters of ESL, executed a Deed of Undertaking, warranty, and indemnity dated 27.07.2011 (undertaking) whereby it undertook a limited obligation to arrange for infusion of funds into ESL. Clause 2.2 of the aforesaid guarantee provides that ECL shall arrange for infusion of such amount of funds into the ESL, as may be necessary to enable ESL to comply with stipulated financial covenants.
- 6.** Subsequently on 21.11.2011, ESL, ECL and SREI entered into a supplementary agreement amending *inter alia* the facility agreement and the security package for the facility.

(iv) CORPORATE INSOLVENCY RESOLUTION PROCESS OF ESL

- 7.** On 27.06.2017, State Bank of India, one of the lenders of ESL, filed an application on 27.06.2017 under Section 7 of the Code, before NCLT Kolkata, which was admitted on 20.07.2017. Thereafter, by an order dated 17.04.2018, passed under Section 31 (1) of the Code, the NCLT Kolkata, approved the resolution plan submitted by Vedanta for acquisition of ESL. Under the approved resolution plan, ESL was acquired for a total consideration of INR 12,719.14 crores, comprising upfront cash payment of INR 5,320.00 crores and conversion of balance amount into equity shares. The resolution plan duly was implemented.
- 8.** Upon implementation of the resolution plan, SREI issued an unconditional 'no due certificate' to ESL certifying that dues owned by ESL to SREI stood fully discharged. However, SREI subsequently claimed that it has been allotted reduced amount of shares upon conversion of balance debt. On 30.06.2018, SREI executed a Deed of Assignment (Assignment Deed) in favour of the appellant, purporting to assign the alleged residual debt.

(v) PROCEEDING BEFORE NCLT

9. The appellant thereafter filed an application under Section 7 of the Code before the NCLT, Cuttack, asserting that; (i) a residual financial debt, remained payable by ESL despite implementation of the resolution plan, and (ii) ECL has furnished a corporate guarantee for the debt of ESL.
10. The NCLT, by order dated 24.06.2022, dismissed the petition filed by the appellant under Section 7 of the Code on two principal grounds; (i) ECL was not a guarantor in respect of financial facilities availed by ESL and, therefore no financial debt was owed by ECL, and (ii) the conversion of ESL's debt into equity under resolution plan resulted in extinguishment of any liability of ECL.

(vi) PROCEEDING BEFORE NCLAT

11. Aggrieved thereby, the appellant preferred an appeal before the NCLAT. The NCLAT in its judgment dated 24.01.2024 framed two specific issues for adjudication namely, (i) whether ECL was a guarantor to SREI for the financial facilities availed by ESL and (ii) whether approval of the resolution plan of ESL resulted in extinguishment, of entire debt, so as to bar any claim against the ECL as a guarantor or third party surety.

12. The NCLAT answered the first issue in the negative, holding that ECL cannot be construed as a guarantor under Clause 2.2 of Deed of Undertaking in respect of the financial facility extended by SREI to ESL. While answering the second issue, it held that approval of resolution plan extinguished the debt, *qua* ESL i.e., corporate debtor alone. It was further held that such extinguishment did not by itself, extend to third parties unless expressly provided in the plan. Nonetheless, the appeal was dismissed on the primary finding that ECL was not a guarantor. Hence, the present appeal.

(vii) RIVAL SUBMISSIONS

13. Learned senior counsel for the appellant contended that Clause 2.2 of the Deed of Undertaking, satisfies the requirements of a contract of guarantee as defined under Section 126 of the Act. It is submitted that Clause 2.2 envisages the ECL to discharge the obligation to infuse funds upon default of ESL in compliance of financial covenants. It is argued that Clause 2.2 involves two step process of discharging liability as a guarantor namely, (i) the first step is to fund ESL for such amounts, and (ii) second step is to eliminate the breach of default on the part of the borrower. It is submitted that the guarantee in question is “See

to it” type guarantee. In support of aforesaid submission, reliance has been placed on the decisions of House of Lords¹ and Court of Appeal².

14. It is argued that ECL had admitted its status as a guarantor in the pleadings before the Madras High Court³ and this Court⁴ and is therefore, estopped⁵ from taking a contrary stand. Our attention has also been invited to the letters dated 30.06.2017 and 20.07.2017 sent by ESL to SREI, evidencing payment of INR 38 Crores by ECL to SREI which according to the appellant, reinforces the existence of guarantee obligation. It is urged that NCLAT erred in relying upon the sanction letter dated 26.07.2011 and information memorandum dated 27.10.2017 to negate the existence of the guarantee and the impugned order warrants interference in this appeal.

15. On the other hand, learned senior counsel for the respondent submitted that Clause 2.2 of the Deed of Undertaking, imposed only an obligation to arrange for infusion of funds and did not amount to a guarantee under Section 126 of the Act. In support

¹ *Moschi vs. Lep Air Services Ltd.*: 2 WLR 1175 (per Lord Diplock).

² *Associated British Courts vs. Ferryways* [2009] EWCA Civ. 189 *and* *Shanghai Shipyard Co. Ltd. vs. Reignwood International Investment (Group) Co. Ltd.*: [2021] EWCA Civ. 1147 .

³ CSD No. 18692 of 2019 *and* Order dated 05.11.2019 passed by Division Bench of Madras High Court.

⁴ Judgment dated 26.11.2021 in Civil Appeal No. 6669 of 2021.

⁵ *Mumbai International Airport Pvt. Ltd. vs. Golden Chariot Airport and Ors.* (2010) 10 SCC 422 (Para 43-50) *and* *Nagindas Ramdas vs. Dalpatram Ichharam and Ors.* (1974) 1 SCC 242 (para 27).

of the aforesaid submissions, reliance has been placed on the decisions of Bombay, Karnataka and Delhi High Courts⁶. It is pointed out that even the appellant in its pleading before NCLAT has admitted that undertaking is not a contract of guarantee. It is also pointed out that the sanction letter by SREI does not envisage facility being secured by any personal or corporate guarantee. It is contended that 'see to it' guarantee is not the type of guarantee contemplated under Section 126 of the Act and has not been adopted in Indian Common Law. It is submitted that ECL made a payment of INR 38 crores to SREI on 20.07.2017 on its own volition, in its capacity as promotor of ESL. It is further submitted that aforesaid payment was not made on account of any contractual obligation.

- 16.** It is also urged that, it is well settled, that pleadings must be read as a whole and cannot be read selectively, out of context or in isolation. It is pointed out that the pleading was filed by the ECL in the proceeding initiated by the appellant to enforce mortgage security created by ECL in favour of SREI. In the said pleading, it was stated that ECL has given a guarantee which is

⁶ Yes Bank Limited v. Zee Entertainment Enterprises Limited and Ors, 2020 SCC OnLine Bom 11763 (Paras 50,53,59,62,67), United Breweries (Holding) Ltd. v. Karnataka State Industrial Investment and Development Corporation Ltd. and Others, 2011 SCC OnLine Kar 4012 (para 6,9) and Aditya Birla Finance Ltd. vs. Siti Networks, 2023 SCC OnLine Del 1290 (Para 26,237,238).

limited only to the mortgage property and the same is not personal. It is urged that reliance on the decisions in **Nagindas Ramdas** and **Mumbai International Airport Pvt. Ltd.** is misplaced. It is finally urged that detailed and reasoned orders passed by the NCLT and NCLAT do not call for any interference in this appeal.

(viii) ANALYSIS

17. We have given our thoughtful consideration to the rival submissions and have carefully perused the records. Section 126 of the Act defines a ‘Contract of Guarantee’, as a contract to perform promise, or discharge the liability, of a third person in case of his default. The essential ingredients of a guarantee, therefore, are (a) existence of principal debt, (b) default by the principal debtor and (c) a promise by the surety to discharge the liability of the principal debtor upon such default. Thus, a guarantee is a promise to answer for the payment of some debt, or the performance of some duty, in case of failure of another party, who is in the first instance, liable to such payment or performance⁷. A guarantee is a security in the form of right of action against a third party. In order to constitute a guarantee,

⁷ Conley (Re), ex p Trustee v Barclays Bank Ltd. (1938) 2 All ER 127, at 130-131 (CA)

there has to be a specific undertaking or unambiguous affirmation to discharge the liability of a third person in case of their default.

18. A guarantee is governed by principles of construction generally governing other documents⁸. A guarantee being a mercantile contract, the Court does not apply to it merely technical rules but construes it so as to reflect what may fairly be inferred to have been the parties' real intention and understanding as expressed by them in writing and to give effect to it rather than not⁹.

19. Now, we advert to Clause 2.2 of Deed of Undertaking dated 27.07.2011, which reads as under: -

“2.2. Financial Covenants

In the event the Borrower is not in a position to comply with the Financial Covenants in the Financing Documents, or has breached such Financial Covenants, **the Obligors will arrange for the infusion of such amount of fund into the Borrower** such that the Borrower is in a position to comply with the abovementioned Financial Covenants.”

⁸ Raghunandan v. Kirtyanand, AIR 1932 PC 131, Eshelby v Federated European Bank Ltd. (1932) 1 KB 254 and Kamla Devi v. Thakhratmal Land, AIR 1964 SC 859

⁹ Halsbury's Laws of England, Vol 49, 5th Edition and Perrylease Ltd v Imecar AG, (1987) 2 All ER 378

Thus, the aforesaid Clause obligates ECL to arrange for infusion of funds into ESL, so as to enable the borrower to comply with the stipulated Financial Covenants.

- 20.** For an obligation to be construed as a guarantee under Section 126 of the Act, there must be a direct and unambiguous obligation of the surety to discharge the obligation of the principal debtor to the creditor. The clause neither records an undertaking to discharge the debt owed to the creditor nor does it contemplate payment to the lender in the event of the default. The clause contains a promise, not to the creditor to pay the debt upon default, but to the borrower to facilitate compliance with Financial Covenants. An undertaking to infuse funds into a borrower, so that it may meet its obligations cannot, by itself be equated with the promise to discharge the borrower's liability to the creditor. A mere Covenant to ensure financial discipline or infusion of funds does not satisfy the statutory requirements of Section 126 of the Act.
- 21.** The sanction letter dated 26.07.2011 does not contemplate any personal or corporate guarantee. On the contrary, it specifically identifies the securities for the facilities and does not require ECL to stand as surety. The fact that no guarantee was furnished

by ECL is also borne out from the following documents: (i) information memorandum in the CIRP of ESL does not reflect any guarantee from the Respondent in connection with SREI's Facility under the category of Guarantee or Security Interest; (ii) In Schedule 1 to the Assignment Agreement, against the column titled "details of the guarantor/co-borrower", the parties to Assignment Agreement stated 'Nil' and (iii) Audited Financial Statement of ESL does not reflect any guarantee obligation towards SREI. Thus, contemporaneous documents reinforce the conclusion that parties never intended to create a contract of guarantee.

22. Section 126 of the Act mandates a guarantor to 'perform a promise' or 'discharge the liability' of a third person which necessarily implies a direct performance or discharge. A 'See to it' guarantee in English Common Law refers to an obligation upon the guarantor to ensure that principal debtor itself, performs its own obligation and the guarantor, therefore, is in breach as soon as principal debtor fails to perform. However, a 'See to it' guarantee does not include an obligation to enable the principal debtor to perform its own obligation. Such an

arrangement would not be a guarantee under Section 126 of the Act.

- 23.** It is pertinent to note that payment of an amount of INR 38 crores by ECL to the appellant was not made on account of any contractual obligation. The said payment was made on 20.07.2017 in its capacity as a promotor of ESL. Such payment by itself does not give rise to any contract of guarantee, particularly when there is no contractual obligation of guarantee in the Deed of Undertaking.
- 24.** It is well settled in law, that, pleadings must be read as a whole and cannot be read selectively out of context or in isolation. The appellant had initiated an action to enforce the mortgage security created by ECL in favour of SREI. In the aforesaid proceeding, ECL in its pleadings stated that it has given a guarantee which is limited to the mortgaged property with no personal recourse to ECL. The reliance of the appellant on the decisions of **Nagindas Ramdas** and **Mumbai International Airport Pvt. Ltd.**, is misconceived, as the aforesaid decisions are an authority for the proposition that if admissions are true and clear, they are the best proof of facts, admitted in the context of Section 58 of the Indian Evidence Act, 1872. Therefore, the

aforesaid decisions have no application to the fact situation of the case.

(ix) CONCLUSION

- 25.** For the aforementioned reasons, we concur with the concurrent findings of NCLT and NCLAT that Clause 2.2 of the Deed of Undertaking does not constitute a contract of guarantee and that ECL cannot be treated as guarantor for the financial facilities availed by ESL. We, therefore, do not find any infirmity in the impugned judgment warranting interference in this appeal.
- 26.** In the result, the appeal is dismissed. There shall be no order as to costs.

.....**J.**
[SANJAY KUMAR]

.....**J.**
[ALOK ARADHE]

NEW DELHI;
JANUARY 06, 2026.