IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 620 OF 2021

Tata Capital Financial Services Limited **...Petitioner**

Versus

1. Neel Motors LLP
2. Akshay Sunil Shah
3. Sunil Sarojbhai Shah
4. Kushal Sunil Shah
5. Shah Autolinks LLP **...Respondents**

Mr. Rohan Savant, Counsel *a/w Pooja Jhaveri, i/b Katariya & Associates for the Petitioner.*

Mr. Yayha Batatawala, *a/w Sneha Mishra for Respondent Nos.2, 3 & 4.*

CORAM: SOMASEKHAR SUNDARESAN, J.
DATE: July 24, 2026

Oral Judgement :

Context and Factual Background:

1. In view of a scheme of arrangement involving the Petitioner and other companies, the name of the Petitioner has been changed to Tata Capital Limited. The change may be effected in front of the Associate. Re-verification is dispensed with.

2. This is a Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("***Arbitration Act***") pursuant to arbitration agreements contained in a Channel Finance Agreement by which financial assistance was extended by the Petitioner to Respondent No. 1, in respect of which Respondent Nos. 2 to 5 are guarantors. Respondent Nos. 2, 3 and 4 are individuals who are partners of Respondent No. 1 which is a limited liability partnership i.e. a body corporate. Respondent No. 5 is a distinct limited liability partnership and is a guarantor akin to Respondent Nos. 2, 3 and 4.

3. It is common ground that the Letters of Guarantee extended by the respective guarantor-Respondents contain an arbitration clause with the seat of arbitration being Mumbai. The existence of an arbitration agreement governing such indebtedness is writ large on the face of the record.

4. While this Petition had been filed way back in 2021, it is noteworthy that just about a month prior to this Petition being filed, the very same Petitioner also initiated Corporate Insolvency Resolution Process ("***CIRP***") against Respondent No. 1, which led to a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("***IBC***") taking effect. The CIRP having failed, it is common ground that Respondent No. 1 is now subject to liquidation proceedings pursuant to liquidation order dated April 1, 2022

passed by the adjudicating authority namely, the National Company Law Tribunal, Mumbai ("***NCLT***").

5. Thereafter, the very same Petitioner also filed proceedings invoking Section 95 of the IBC against each of Respondent Nos. 2, 3 and 4 in June 2022. In terms of Section 96 of the IBC, the very filing of resolution proceedings under Section 95 of the IBC automatically triggers an interim moratorium preventing the continuation of proceedings against such individuals in respect of whom insolvency proceedings have been applied for. Such moratorium commences on the date of Application made in relation to the debts of the individuals. Therefore, by the Petitioner's own action, the interim moratorium under Section 95 also got triggered and there was no scope for entertaining this Petition which has remained pending since then.

6. Mr. Rohan Savant, Learned Advocate on behalf of the Petitioner points to an amendment to the IBC effected by insertion of subsection 4 to Section 96 of the IBC which reads thus:

> *"(4) **The provisions of this section shall not apply** where an application is filed for initiating an insolvency resolution process **in respect of a personal guarantor to a corporate debtor**."*

[Emphasis Supplied]

7. It is evident that this amendment has been notified and brought into effect on May 26, 2026 pursuant to a notification dated May 22, 2026. Mr. Savant would also point to a notice dated January 18, 2023 published by the Ministry of Corporate Affairs inviting pre-legislative consultations with stakeholders in the market about the proposed amendment which has now been given effect. He would point to Paragraph 22.2(a) of that notice to indicate that the amendment was effected to "*remove any perverse incentives*" of initiating individual insolvency resolution process in order to make Section 96 "*inapplicable to*" personal guarantors.

8. Therefore, he would submit that this is a case where the moratorium under Section 96 of the IBC no longer applies and considering that there is no defence to the admitted existence of a loan agreement and the indebtedness flowing therefrom, relief under Section 9 of the Arbitration Act should ordinarily follow. However, he would also fairly state that considering the sheer distance of time since the filing of this Petition, he would not press for an interim protection of deposit from the Section 9 Court reserving the right to do so before the arbitral tribunal as and when appointed. At this stage, he seeks disposal of the Section 9 Petition purely by way of relief in terms of way of clauses (c) and (d) which read thus:

> *"(c) that pending the hearing and final disposal of the Arbitral proceedings, this Hon'ble Court be pleased to direct the Respondents to disclose on oath and/or on affidavit, the assets and properties, movable and/or immovable, owned by each of them giving complete details and this Hon'ble Court be pleased to attach such assets/properties of the Respondents;*
>
> *(d) that pending the hearing and disposal of Arbitration proceedings, making of the Arbitral Award and until final execution of the Arbitral Award, the Respondents, by themselves, their employees, servants and/or agents or otherwise howsoever be restrained by an order and injunction from in any manner selling, transferring, disposing-off, or alienating or encumbering or pledging or mortgaging or hypothecating or charging or parting with possession of or transferring or creating any right, title or interest or license in favour of anyone else in respect of the assets/properties either movable and/or immovable, that may be disclosed by the Respondents on oath and/ or on Affidavit;"*

9. Mr. Yayha Batatawala, Learned Advocate on behalf of Respondent Nos.2, 3 and 4 would submit that while the amendment to Section 96 has indeed been effected, reading it in the manner canvassed on behalf of the Petitioner would end up giving the amendment retrospective effect. He would point to the phrase "where an application *is filed*" to indicate that this Section will only apply to individual insolvency resolution proceedings initiated after May 26, 2026 and cannot be made applicable to filings that had already been made as of that date. He would submit that any other reading of this provision would give it a retrospective effect, which is not the evidently stated intention from the language of the legislation.

10. That apart, Mr. Batatawala would contend that the mischief sought to be plugged by the amendment is the initiation of individual insolvency resolution processes by individuals colluding with some friendly creditor to frustrate other creditors, whereas in the instant case, it is the Petitioner itself that had initiated the insolvency resolution process. Therefore, he would submit that the purpose for which the amendment was made is not really being undermined by the reading of the provision canvassed by him, in the facts of this case. Be that as it may, he would also submit that while the resolution process is not strictly a recovery proceeding and strictly there is no estoppel codified in law, both the paths i.e. the arbitration proceedings as well as the resolution proceedings would culminate in and are aimed at the Petitioner's efforts to effect recovery from these Respondents. Therefore, the Petitioner must choose one process or the other, and must not be routinely granted reliefs under Section 9 of the Arbitration Act.

Analysis and Findings:

11. Having heard the parties and having examined the record and the provisions of law with their assistance, in my opinion, the phrase "where an application *is filed*" would bring within its sweep anything that is filed and is pending with the Adjudicating Authority as of that date. If the intention had been to bring within the sweep of Section 96(4) only filings made after the

introduction of the provision, the legislature would have consciously used language to that effect. Equally, while it is arguable that the legislature has not used clarificatory language in the provision to indicate that it covers applications already filed and to be filed, in my opinion, this provision would squarely fit within the ambit of a *retroactive* application. The reading of the words "*is filed*" as including those that have been filed and are pending, will not give retrospective effect, but will have prospective effect from the date on which the provision takes effect. Therefore, in my opinion, any Application that is filed for initiating an insolvency resolution process in respect of a personal guarantor to a corporate debtor would not fall within the ambit of Section 96(1) and related provisions with effect from May 26, 2026. In other words, anything that "is filed" would include within its sweep anything that has been filed and is continuing to remain under adjudication under the IBC.

12. In ***Rajkumar Nagpal***[1], in near-identical circumstances, the Supreme Court considered the introduction of a condition in relation to restructuring of debentures by issuance of a circular. The Supreme Court quoted from *Principles of Statutory Interpretation by Justice G.P. Singh* (*14th Edn.*, 2016 at p. 583) as follows:

> *"The rule against retrospective construction is not applicable to a statute merely because "a part of the requisites for its action is drawn from a time antecedent to its*

1 *Securities and Exchange Board of India v. Rajkumar Nagpal*, *(2023) 8 SCC 274*

passing". If that were not so, every statute will be presumed to apply only to persons born and things which come into existence after its operation and the rule may well result in virtual nullification of most of the statutes."

[Emphasis Supplied]

13. Analysing the meaning of "retrospective", "retroactive" and "prospective", the Supreme Court declared the law in the following words:-

(iv) The SEBI Circular has retroactive application

98. *Mr N. Venkataraman, learned Senior Counsel and Additional Solicitor General* ***has argued that the SEBI Circular is retroactive in nature as it does not take away or impair any vested rights. It operates in the future, based on events that arose prior to its issuance****. Mr Darius Khambata, learned Senior Counsel appearing for RCFL* ***argued that the effect of applying the SEBI Circular to the present case will render it retrospective and not retroactive.*** *According to him, Clauses 22 and 23 of the Fifth Schedule to the Debenture Trust Deed(s) vested debenture-holders with the right to authorise debenture trustees "to sanction any compromise or arrangement proposed to be made between the company and the beneficial owner(s)/debenture-holder(s)". This* ***sanction could be authorised by a majority of "not less than three-fourths of the persons voting*** *... or if a poll is demanded ... not less than three-fourths in value of the votes cast on such poll".* ***The SEBI Circular, it has been urged, changed the nature of the special majority required to sanction a compromise by introducing the requirement of a majority of 60% of ISIN level votes.***

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100. *In Vineeta Sharma v. Rakesh Sharma [Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1 : (2021) 1 SCC (Civ) 119]* ***this Court described the nature of prospective, retrospective, and retroactive laws*** *: (SCC p. 53, para 61)*

> *"61. The* ***prospective statute operates from the date of its enactment conferring new rights****. The* ***retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws****. A* ***retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier****. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events."*

101. ***The terms "retrospective" and "retroactive" are often used interchangeably. However, their meanings are distinct****. This Court succinctly appreciated the difference between these concepts in State Bank's Staff Union (Madras Circle) v. Union of India [State Bank's Staff Union (Madras Circle) v. Union of India, (2005) 7 SCC 584 : 2005 SCC (L&S) 994] :*

> ***"Retroactivity" is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts****. The first, which may be called* ***"true retroactivity", consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated.*** *The second concept, which will be referred to as* ***"quasi-retroactivity", occurs when a new rule of law is applied to an act or transaction in the process of completion….The foundation of these concepts is the distinction between completed and pending transactions…."*** *[T.C. Hartley, The Foundations of European Community Law 129 (1981).]*

102. *Many decisions of this Court define "retroactivity" to mean laws which destroy or impair vested rights. In real terms, this is the definition of "retrospectivity" or "true retroactivity". "Quasi-retroactivity" or simply "retroactivity" on the other hand is a law which is applicable to an act or transaction that is still underway. Such an act or transaction has not been* *completed and is in the process of completion.* ***Retroactive laws also apply where the status or character of a thing or situation arose prior to the passage of the law. Merely because a law operates on certain circumstances which are antecedent to its passing does not mean that it is retrospective.***

103. *In the present case,* ***RCFL issued the debentures and defaulted on the payments to the debenture-holders prior to the issuance of the SEBI Circular.*** *However,* ***as of 13-10-2020 (the date on which the SEBI Circular came into force), a compromise or agreement on the restructuring of the debt owed by RCFL did not exist****. The debenture-holders were not vested with any rights with respect to the resolution of RCFL's debt.* ***The existence of the debt and the subsequent default by RCFL was the status of events, which existed prior to 13-10-2020****.* ***Once it came into force, the SEBI Circular applied to the manner of resolution of debt, as specified therein.****"*

[Emphasis Supplied]

14. A plain reading of the foregoing would make it clear that the term "retroactive", while being used differently in different judgements is actually a prospective application of a newly introduced requirement of a law to facts existing as of the date of the introduction of the requirement. The mere reason that some facts may have already been into existence but continue to exist would not mean that the application becomes retrospective.

15. Applying the same principles to Section 96(4) of the IBC, in my opinion, a moratorium insofar as it operated in respect of Respondent Nos. 2, 3 and 4 until May 25, 2026 ceased to operate with effect from May 26, 2026, in respect of applications filed under Section 95 of the IBC. In this view of the matter, in

my opinion, the Petition would need to be considered as not being barred by the moratorium under IBC.

16. I am conscious that IBC proceedings were initiated by none other than the Petitioner and it is nobody's case that the Respondent had exploited any perverse incentive to use the automatic moratorium under Section 96 to frustrate the Petitioner's recovery proceedings. However, the provisions of Section 96, as amended, are agnostic to the person at whose behest the application under Section 95 of the IBC was filed.

17. I am also conscious that by legislative design, in a given situation, a lender with substantial interest may constitute a significant majority vote in the Committee of Creditors that would oversee the resolution process, and therefore in litigation between the individual undergoing insolvency and such creditor, there can arise a conflict of interest with the same creditor controlling both parties to the litigation. However, this is a matter of legislative design and the Court cannot import its notions of fairness in applying clearly articulated provisions of law. Besides, the absence of automatic moratorium under Section 96 for guarantors of corporate debtors undergoing corporate insolvency resolution process would only cover the temporary time period until the moratorium commences under Section 101 when the application filed under Section 95 of the IBC is adjudicated.

18. That said, I must mention that the only reason that the Section 9 Petition has not been considered till date is the existence of the moratorium (even if initiated by none other than the Petitioner) and not laxity on the Petitioner's part in pursuing it. Now that the moratorium has been lifted, it is considered appropriate to deal with it.

19. Considering that Mr. Savant restricts the relief sought in the Section 9 Petition solely to prayer clauses (c) and (d) (extracted above), which essentially only call for disclosure of assets and prevention of dissipation of assets pending arbitration, and not for a deposit of the amounts, these are benign reliefs which are reasonable to grant in the facts of the case.

20. In any case, as rightly pointed out by Mr. Batatawala, the appointment of the Insolvency Resolution Professional would mean such information would be available for conduct of the resolution process as well. Considering that the Section 9 jurisdiction is an equitable jurisdiction, it would be appropriate to grant these limited reliefs as sought by the Petitioner under the Section 9 jurisdiction.

21. In these circumstances, the Petition is ***finally disposed of*** in terms of prayer clauses (c) and (d) (already extracted above). The parties may take appropriate steps for commencement of arbitration.

22. While Mr. Savant indicates that a Section 11 Application will be filed within a period of two weeks, it is made clear that if no such Application is filed within a period of four weeks from the date of upload of this order on the Court's website, this order shall stand vacated. Should such Application under Section 11 be filed, this order would continue subject to further expansion, contraction, vacation or other modification by the arbitral tribunal.

23. The Petition is ***finally disposed of*** in the aforesaid terms.

24. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]