

A.F.R.

Judgment reserved on 21.8.2017**Judgment delivered on 06.9.2017****Case :- WRIT - C No. - 30285 of 2017****Petitioner :-** Sanjeev Shriya**Respondent :-** State Bank Of India and 6 others**Counsel for Petitioner :-** Aditya Singh, Mr. Navin Sinha, Rahul Agarwal**Counsel for Respondent :-** A.S.G.I., Anadi Krishna

Narayana, Satish Chaturvedi, Siddharth

Connected with

Case :- WRIT - C No. - 30033 of 2017**Petitioner :-** Deepak Singhanian and another**Respondent :-** State Bank of India**Counsel for Petitioner :-** Dinesh Kacker**Counsel for Respondent :-** Satish Chaturvedi, Akash Chandra

Mauraya, Ramesh Kumar Shukla

Hon'ble Mahesh Chandra Tripathi, J.

1. Heard Shri Navin Sinha, Senior Advocate assisted by Aditya Singh, Rahul Agarwal, K.K. Wadhwa, Avirudh Wadhwa, Anandava Handa and Vipul Kumar for the petitioner in Writ C No.30285 of 2017 and Shri M.L. Lahoti assisted by Shri Dinesh Kakker and Shri Akash Chandra Maurya for the petitioners in the connected Writ C No.30033 of 2017 and Shri Satish Chaturvedi & Shri Siddharth for the respondents.

2. In both the writ petitions, the petitioners are assailing the orders dated 6.7.2017 passed by the Debt Recovery Tribunal, Allahabad in Original Application No.238/2017 (State Bank of India vs. LML Limited and ors).

3. The facts of both the writ petitions, according to the petitioners, in brief are that the petitioners are the guarantors of M/s L.M.L. Limited, Kanpur, which was declared as 'Sick Industrial Company' by the Board of Industrial and Financial Reconstruction on 8.5.2007. The State Bank of India (in brevity, SBI) had filed the Original Application No.238 of 2017 under Section 19 (3) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short, the Act of 1993) before the Debt Recovery Tribunal (in brevity, DRT), Allahabad for recovery of Rs.72,75,29,053.71 against the company (in

liquidation) as the principal borrower and Deepak Singhania, Sanjeev Shreya and Anurag Kumar Singhania/the petitioners as the guarantors with following reliefs:-

“(a) That a recovery certificate be issued against all the defendant nos. 1 to 4 to pay jointly and severally to applicant the sum of Rs.72,75,29,053.71 together with interest from 28.03.2017 @ 6.5% average annual yield on annual compounding basis on the sum of Rs.72,75,29,053.71 till the actual realization with all cost, charges and expenses that may be incurred from the date of filing of application till payment/realisation by the applicant in respect of the said hypothecated goods and immovable properties mortgaged as aforesaid and interest thereon as aforesaid and the costs of this application.

(b) That this Hon'ble Tribunal may be pleased to order for the sale of said hypothecated assets and equitably mortgaged properties described in para (5.5) of the application and appropriation of the net sale proceed in or towards satisfaction of said amount mentioned in prayer (a) thereof.

(c) That in the event of the net sale proceeds realized from the said the immovable properties as aforesaid being insufficient to cover the amounts mentioned in prayer (a) hereof, remaining outstanding may be recovered from the sale of personal movable and immovable properties of defendants nos. 2 to 4.

(d) That such further and other relief may be granted to the applicant as the nature and circumstances of the case may require and as this Hon'ble Court may deem fit.”

4. The case was registered as I.A. No.1013/17. The petitioners, who have been arrayed as defendants nos. 2 to 4 moved an application seeking stay of the proceeding before the DRT, Allahabad against them. On 6.7.2017 the DRT heard both the parties and passed the impugned order, staying proceeding against the first respondent i.e. M/s L.M.L. Limited, a Public Limited Company/borrower on the basis of an order passed by the National Company Law Tribunal (in brevity, NCLT), Allahabad dated 30.5.2017 in Company Petition No.IB (55)ALD/2017, imposing a Moratorium on legal proceedings under Section 14 of the Insolvency and Bankruptcy Code, 2016 (in short, IBC, 2016) and directed the petitioners to give the details of pending applications with foreign authorities for permanent immigration or visa or travelling permits; details of properties they are having in foreign lands and in India; details of business exclusively or

under partnership in foreign lands and in India; details of all their movable and immovable assets including bank accounts deposits on affidavits and they have been directed to file their written statement. The order of the DRT dated 6.7.2017 reads as under:-

“Ld. Counsel Sri S.K. Srivastava is present on behalf of the applicant bank.

Ld. counsel Sri Dinesh Kakkar is present on behalf of the defendants.

Counsel for the bank submitted that he does not want to file any reply to I.A. No.1013/17 without prejudice to his right to argue on legal issues.

With the concurrence of parties case is taken up for hearing on I.A. No.1013/17.

Ld. counsel for the bank submitted that order produced by defendants is binding upon only upon defendant no.1 and bank has every right to proceed against guarantors and their personal properties as such proceedings cannot be stayed even in the light of orders passed by National Company Law Tribunal dt. 30.5.2017.

Counsel for the defendants to rebut said contentions referred Section 238 of Insolvency and Bankruptcy Code, 2016 and submitted that this Act has overriding effect upon Recovery of Debts Due to Banks & Financial Institutions Act, 1993 and further it is a subsequent Act so even otherwise the provisions of Insolvency and Bankruptcy Code will prevail upon the Act, 1993. It is argued on behalf of defendants that in case creditors failed to adopt restructuring then company will go into litigation and bank will recover its dues as per orders of NCLT.

He further submitted that as per Section 231 of Insolvency and Bankruptcy Code jurisdiction of civil court is barred in respect of matters pending before NCLT.

He further referred proviso to Section 14 provides provision for restructuring and in view of said proviso O.A. of the bank is liable to be stayed.

He further referred Section 3 (10) of Insolvency and Bankruptcy Code, definition of creditor of Insolvency and Bankruptcy and submitted that in the said provisions the bank come within the ambit of creditor.

I have heard the Ld. Counsel for the parties.

At the outset this Tribunal is to say that DRT constituted under Recovery of Debts Due to Banks & Financial Institutions Act, 1993 is not a civil court so provisions of Section 231 of Insolvency and Bankruptcy Code are not applicable and argument advanced is misconceived one.

In fact by taking shelter of order dt. 30.5.2017 passed by Hon'ble NCLT the defendants intends to stall proceeding initiated by the bank against borrower and guarantor simultaneously, as it is argued on behalf of defendants that in case creditors failed to adopt restructuring then company will go into liquidation and bank will recover its dues as per orders of NCLT.

I have given thoughtful consideration to matter in issue. In this case applicant bank has filed application under Section 19 of Recovery of Dues Due to Banks & Financial Institutions Act, 1993 for recovery of Rs. Rs.72,75,29,053.71(Rs. Seventy two crores, seventy five lacs, twenty nine thousand, fifty three and paise seventy one only) on 27.3.2017 and as per directions of this Tribunal took steps through registered post on 26.4.2017. The defendants received the summons so sent and put their appearance on 15.5.2017 i.e. the date fixed and thereafter bank supplied copy of O.A. and defendants sought adjournment to file written statement and keeping in view facts and circumstances of case 30 days time was granted to defendants for filing written statement. Further, in order dated 19.5.2017 this Tribunal categorically observed and advised the parties to the effect that this is a high value case and it is expected that parties to lis will assist this Tribunal for day to day hearing.

The defendants instead of filing reply opted to prefer one petition under Insolvency and Bankruptcy Code, 2016 after initiation of recovery proceedings by certain bank.

At this stage, counsel for the defendant no.1 to 4 interrupted and stated that AGM of the bank Miss Sujata Chandra was present before Hon'ble NCLT on 30.5.2017 and order was passed in her presence.

It appears that defendant no.1 has moved to Hon'ble NCLT as counter blast or to delay the present proceedings, but this Tribunal is bound by the provisions of statute, but it is apparent that just to delay the recovery proceedings defendants have opted to file petition before Hon'ble NCLT taking advantage of provisions of said Act. I concur with the arguments advanced on behalf of defendants that provisions of Insolvency and Bankruptcy Code will prevail over. Recovery of Debts Due to Banks & Financial Institutions Act, 1993 but as far as corporate entity is concerned and certainly against other defendants there is neither any specific order by Hon'ble NCLT nor there is any restriction by the said Court to proceed against individual guarantors/mortgagors. The Ld. Counsel for defendants have referred various provisions of Insolvency and Bankruptcy Code, but that pertains to company only. Ld. Counsel for defendants have failed to quote and show any provision which may direct or suggest to discontinue proceedings against individual guarantors/mortgagors.

I am of the considered opinion that order dt. 30.5.2017 passed by Hon'ble NCLT is qua proceedings against defendant no.1 only which is a corporate entity and there is no order to restrain proceedings against individual guarantors/mortgagors who gave their personal guarantees and offered their personal securities and present proceedings can continue against them. The applicant bank in the interim prayer has prayed for restraining the defendant no.2 to 4 from transferring, alienating or otherwise dealing with the hypothecated goods and mortgaged properties, so in the meantime I would like to direct defendant no.2 to 4 to disclose following information:-

- (i) Details of pending applications with foreign authorities for permanent immigration or visa or travelling permits.
- (ii) Details of properties they are having in foreign lands and

in India.

(iii) Details of business exclusively or under partnership in foreign lands and in India.

(iv) Details of all their movable and immovable assets including bank accounts deposits on affidavits.

(v) Further defendants are directed to submit copy of their Addhar Cards.

Further defendant no.2 to 4 are directed to file their written statement within 07 days failing which they would be liable to pay cost of Rs.50,000/- as it is a high value case and this Tribunal has already advised parties to list for day to day hearing.

However, proceedings against defendant no.1 will be in abeyance till further orders of Hon'ble NCLT.

Post the matter on 13.7.2017 for further proceedings.”

5. The petitioners are directors of the company (in liquidation) and they had inter alia executed a Deed of Guarantee dated 28.3.2005 in favour of the first respondent in pursuance of a Multi Partite Agreement dated 28.3.2005. The petitioners were defendant nos. 2 to 4 in the impugned proceedings before the Tribunal. It has also been averred that the petitioners were not actively involved in the day-to-day operation of the company (in liq.). The first respondent initiated proceedings being Original Application No.238 of 2017 (State Bank of India vs. M/s LML Limited and orders) under the Act of 1993 before the DRT, Allahabad claiming that the second respondent failed to abide by the MPA dated 28.3.2005 and defaulted in the payments due to the SBI and prayed the reliefs, which have been quoted as above. An interim order was passed by the Debt Recovery Tribunal in the said proceeding on 30.3.2017 requiring the defendants therein to disclose particulars/properties/assets specified by the first respondent. In the aforesaid proceeding, it has also been prayed by the SBI that the defendants may be restrained from disposing of the properties/assets while the proceeding is pending consideration.

6. Meanwhile, M/s L.M.L. Limited approached to the NCLT, Allahabad by preferring a Company Petition under Section 10 of the IBC, 2016 being Company Petition No.IB(55)/Ald/2017 (In Re:

LML Limited) seeking initiation of the Corporate Insolvency Resolution Procedure in terms of the IBC, 2016 and asked for following reliefs in terms of Section 13 of the IBC 2016:-

- “1. To admit the Application filed by the Corporate Applicant Company and pass an order for initiating the corporate insolvency resolution process under Section 10 of the Insolvency and Bankruptcy Code, 2016.
2. To cause a public announcement of the initiation of corporate insolvency resolution process and calling for submissions of claim under Section 15 of the Code, and
3. To declare a moratorium in terms of Section 14 of the Insolvency and Bankruptcy Code, 2016.”

7. In the said proceeding, an order dated 30.5.2017 was passed by the NCLT in the Company Petition in question. The relevant portion of the order reads as under:-

“6. In view of the above stated factual and legal position of the case, we find that the corporate debtor has complied with requirement of Section 10 of the Code. In view of the above the present Application deserved to be allowed hence is allowed. We admit the petition for declaring Moratorium with Consequential Directions which are given as under:-

- i. That the order of moratorium u/s 14 shall have effect from 30.05.2017 till the completion of corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.
- ii. That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority, transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein, any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the SARFESI Act, 2002, the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- iii. That the supply of essential goods or services to corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period.
- iv. That the provisions of Section 14 sub-section (1) shall not apply in such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- v. That this Bench hereby appoints Mr. Anil Goel, Registration No.IBBI/1PA-001/IP-00020-2016-2017/1623,

Address: AAA Insolvency Professional LLP, E-10A, Kailash Colony, New Delhi-110048, email id:anilgoel@akgindia.in as Interim Resolution Professional to carry the functions as mentioned under Insolvency and Bankruptcy Code, 2016.

vi. That the public announcement of corporate insolvency resolution process be made immediately as specified under Section 13 of the Code and calling for submissions of claim under Section 15 of the code.

Vii. An authentic copy of this order be issued to parties including Interim Resolution Professional after the completion necessary formalities.

In view of the above, the Application is admitted and accordingly stand disposed of.”

8. Thereafter the Insolvency Professional appointed by the N.C.L.T. had issued a public announcement dated 2.6.2017, inter alia inviting claims from the creditors of the company (in liq.) to be submitted latest by 13.6.2017. The same was also published in daily newspapers “Financial Express” and “Amar Ujala”. It was also intimated to the Bombay Stock Exchange and the National Stock Exchange. The Insolvency Professional had also issued notice for meeting of the creditors of the company inter alia containing the agenda for the meeting of the Committee of Creditors of the first respondent. The said notice alongwith the agenda was also sent to the first respondent. It is also relevant to indicate that the Insolvency Professional in the said notice had acknowledged that as many as 1000 claims have been received from various creditors of the second respondent. Even the first respondent had also filed claim before the Insolvency Professional and had participated in the said meeting, which was held on 29.6.2017. The DRT issued notice on the application being I.A. No.1013/2017 on 29.6.2017 and passed the impugned order dated 6.7.2017 whereby it has kept the proceedings against the first petitioner in abeyance but simultaneously it has proceeded against the petitioners as guarantors.

9. In this backdrop, Shri Navin Sinha, Senior Advocate assisted by Ms. Anandava Handa appearing for the petitioners in Writ C No.30285 of 2017 submitted that the writ petition raises substantial question of law, as to whether the SBI can be allowed

to pursue proceedings under Section 19 (3) of the Act of 1993 for recovery of loan amount taken by the company (in liquidation) before the Debt Recovery Tribunal, Allahabad against the petitioners, who are guarantors when the National Company Law Tribunal (NCLT) has already issued moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 and stayed proceedings in respect of the company (in liquidation). The DRT has failed to take notice of Part-III of IBC, 2016 and the provisions of IBC 2016 will prevail over the provisions of the Act of 1993. Since the petitioner is director of the company (in liquidation), he is statutorily bound to provide his assistance to the resolution professional appointed under the IBC 2016 for the company (in liquidation) by the NCLT. It has also been submitted that the entire proceeding before the DRT is completely without jurisdiction precisely in the backdrop that once the proceeding has already been commenced under the IBC 2016 and the Moratorium under Section 14 of IBC 2016 has already been issued and even the parties have put their appearance before the Insolvency Professionals, then the impugned proceedings only against the guarantors of a principal debtor are per se bad specially in the present situation where there is a legal bar/moratorium against the principal debtor imposed by operation of law IBC 2016. The NCLT has already ceased of the process of insolvency resolution against the company (in liq.) under IBC 2016. Moreover, the SBI has also put their appearance in the said proceedings regarding its claim, and by no stretch of imagination the DRT could adjudicate any claims of alleged debt of the second respondent and without determination of debt the DRT cannot proceed against the guarantors. The SBI at no point of time had disassociated itself from the proceeding before the NCLT but it is actively participating in the proceeding.

10. Shri Navin Sinha, Senior Advocate also submitted that the entire action so initiated by the DRT is in teeth of aim and object of IBC 2016, which has been enacted to consolidate and amend

the laws relating to re-organisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto. Much emphasis has been placed on the provisions contained under Section 2 (e), 3 (2), 3 (7), 3 (8), 3(11), 3 (12) 5 (8) and on the basis of aforesaid provisions he has tried to submit that the said provisions would also attract in the case of guarantor.

11. It has been submitted that Section 6 in Chapter II (Corporate Insolvency Resolution Process) of the IBC 2016 deals with persons who may initiate corporate insolvency resolution process. Section 7 deals with initiation of corporate insolvency resolution process by financial creditor and Section 8 deals with insolvency resolution by operational creditor. Sections 10 deals with initiation of corporate insolvency resolution process by corporate application. Section 12 relates to time limit for completion of insolvency resolution process. Section 14 relates to Moratorium and provides that on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following namely the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.

12. In this backdrop, it has been submitted that so far as interest of the SBI and other creditors are concerned, their interest are protected and even the property cannot be alienated. He has also placed reliance on Section 30, which provides the manner in which a resolution plan may be submitted by a resolution applicant. There are no restrictions on who can be a resolution applicant, subject to compliance with all

applicable laws. This may even include promoters of the corporate debtor. This provision would facilitate proposals from persons interested in commercially viable but insolvent business to rescue such entities, creating value for all stakeholders in the process. The resolution professional shall submit each resolution plan, which conforms to be criteria provided under clauses (a) to (f) of Section 30 (2) to the committee of creditors who shall approve a resolution plan by a 75% majority of voting shares. Only, thereafter, the resolution professional may submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority as per provisions contained under Section 30 (6) of the IBC 2016. Section 31 deals with approval of resolution plan and provides that if the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. Sufficient safeguards are provided in favour of creditors. Even Section 31 (2) provides that where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

13. Shri Navin Sinha, Senior Advocate has also apprised to the Court that Section 60 in Chapter VI relates to Adjudicating Authority for corporate persons. Section 60 (1) provides that the adjudicating authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located. There is great deterrence provided under the IBC 2016 against the corporate debtors and even the punishment for contravention of moratorium or the resolution plan has also been provided in

Section 74 of the IBC 2016. After giving a glance to the legislative provisions of the IBC, 2016 he has placed reliance on the array of parties, which have been made by the SBI before the Debt Recovery Tribunal, Allahabad in Original Application in question wherein M/s L.M.L. Limited, a Public Limited Company (borrower) has been arrayed as first respondent; Shri Sanjeev Shriya (the petitioner in Writ C No. 30285 of 2017) has been arrayed as third respondent (director/guarantor) and Shri Deepak Singhania as well as Shri Anurag Kumar Singhania (the petitioners in the connected Writ C No.30033 of 2017) have been arrayed as second and fourth respondents respectively.

14. It has been submitted that the first relief has been sought for issuance of recovery certificate against all the defendants to pay jointly and severally to the SBI a sum of Rs.727529053.71 together with interest from 28.3.2017 and the third relief has been sought before the DRT to the extent that in the event of the net sale proceeds realized from the said immovable properties as aforesaid being insufficient to cover the amounts mentioned in prayer (a) hereof, remaining outstanding may be recovered from the sale of personal movable and immovable properties of defendants nos. 2 to 4. Once the application under IBC 2016 is pending consideration; the amount has not been quantified and moreover, proceeding has already been stayed against the first respondent in the Company Law Tribunal, then by no stretch of imagination, the liability can be fastened on the guarantors and no final relief can be accorded in the matter. The entire exercise is futile and nullity and as such, this Court should come for rescue and reprieve to the petitioners otherwise the petitioners would suffer irreparable loss and injury. In support of his submission, he has placed reliance on the judgments of Apex Court in **Calcutta Discount Company Limited vs. Income Tax Officer, Companies District, I and another** AIR 1961 SC 372; **Punjab National Bank Ltd vs. Shri Vikram Cotton Mills and another** in Civil Appeal No.1957 & 1958 of 1966 decided on 17.9.1969 reported in MANU/SC/0032/1969; **Punjab National**

Bank Ltd vs. Shri Vikram Cotton Mills and another AIR 1970 SC 1973; **Oshi Foods Limited and ors vs. State Bank of India** 1997 (2) MPLJ 643; **Karnataka State Financial Corporation vs. N. Narasimahaiah and ors** AIR 2008 SC 1797 and **Whirlpool Corportion vs. Registrar of Trade Marks, Mumbai and ors** (1998) 8 SCC 1.

15. Shri M.L. Lahoti assisted by Shri Dinesh Kakker, appearing for the petitioners in the connected writ petition, vehemently contended that while passing the order impugned dated 6.7.2017 learned Debt Recovery Tribunal had made certain passing observations that the respondents had deliberately moved to the NCLT as a counterblast or just to delay the present proceeding, only with this object the defendants/respondents have opted to file petition before the NCLT taking advantage of the provisions of IBC, 2016. At this stage, such view was unwarranted. He further made submissions that even though learned DRT was of the view that the IBC, 2016 will prevail over the Act of 1993 as far as corporate entity is concerned but contrarily, it has proceeded against the other guarantors/defendants. Learned DRT has also erred in law while interpreting the order passed by the NCLT that there is neither any specific order by the NCLT nor there is any restriction by the said Court not to proceed against individual guarantors/mortgagors. He has also placed reliance on various provisions of IBC, 2016, which pertain not only to the company but also to the individual guarantors/mortgagors. While making submission, learned counsel for the petitioners has vehemently contended that learned DRT has failed to consider that there are already various safeguards in the IBC, 2016 wherein the interest of creditors are protected. In this backdrop, he submitted that there was no deliberate attempt by the respondents/petitioners to delay the proceeding and once the amount/debt is not crystallized as yet, then there was no occasion for the Tribunal to proceed in the matter.

16. On the other hand, Shri Satish Chaturvedi, learned counsel appearing for the respondent bank has vehemently opposed the writ petitions by submitting that against the impugned order the petitioners have got efficacious alternative remedy to assail the validity of the impugned order passed by the Debt Recovery Tribunal before the Debt Recovery Appellate Tribunal. Admittedly, the petitioners are defaulter guarantors and they cannot escape from the liabilities due to the bank. Under the IBC 2016 there is no restriction not to proceed against the guarantor independently. The rights of the respondent bank are flowing from the deed of guarantee executed by the petitioners. The respondent bank has rightly proceeded to enforce the rights available to it. The Debt Recovery Tribunal has jurisdiction to continue with the proceeding against the guarantors of the principal debtor. The recovery proceedings were initiated by the respondent bank before the DRT prior to the order of the NCLT dated 30.5.2017 and the said order does not come in the way of the DRT in proceeding against the petitioners as guarantors. The proceeding can be initiated against the guarantors for recovery of debt for the reasons mentioned in the order under challenge. Learned NCLT has passed the injunction order relating to the Corporate Debtor and there is no order in favour of the guarantors including the petitioners. There is no legal bar for the DRT not to continue with the proceeding against the guarantors of the principal debtor and the deed of guarantee makes it clear that the proceeding can very well continue in the DRT against the petitioners/guarantors. The IBC 2016 pertains to insolvency resolution, whereas the Act of 1993 pertains to recovery of dues, and as such there is no overlapping between them. The DRT has not committed any error in proceeding against the petitioners/guarantors.

17. Much emphasis has been drawn on paragraphs 11, 14, 15, 16, 17, 18, 64 and 65 of the Deed of Guarantee, which has been executed between the parties on 28.3.2005 (Annexure No.2 to the writ petition). In clause-2 of the deed of agreement it has

been mentioned that in the event of any default on the part of the borrower to comply with or perform any of the terms, conditions and covenants contained in the said Multi-Partite Agreement, the guarantors shall, upon demand, forthwith pay to the lender without demur all the amounts payable by the borrower to it under the said Multi-Partite Agreement. Clause-4 of the deed of agreement provides that the guarantors shall also indemnify and keep the lender indemnified against all losses, damages, costs, claims and expenses whatsoever, which the lender may suffer, pay or incur by reason of or in connection with any such default on the part of the borrower including legal proceedings taken against the borrower and/or the guarantors for recovery of the monies referred to in Clause 1 above. The proceeding can go on simultaneously and the Tribunal cannot be restrained not to proceed in the matter against the guarantors. He has placed reliance on the judgments of Apex Court in **Allahabad Bank vs. Canara Bank and another** (2000) 4 SCC 406; **Kailash Nath Agarwal and ors vs. Pradeshia Industrial & investment Corporation of U.P. Ltd and another** (2003) 4 SCC 305; **Eureka Forbes Limited vs. Allahabad Bank** 2010 LawSuit (SC) 261; **Commercial Tax Officer, Rajasthan vs. M/s Binani Cements Ltd & another** JT 2014 (3) SC 378; **Madras Petrochem Limited and another vs. Board for Industrial and Financial Reconstruction and others** (2016) 4 SCC 1; **Pegasus Assets Reconstruction Private Limited vs. Haryana Concast Limited and another** (2016) 4 SCC 47 in support of his submission.

18. In order to appreciate the controversy in hand, Sections 2, 3, 5, 6, 7, 8, 10, 12, 14, 31, 33 and 60 of the IBC 2016 are extracted below:-

" 2. Application

The provisions of this Code shall apply to—

(a) any company incorporated under the Companies Act, 2013 or under any previous company law;

(b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;

(c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;

(d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and

(e) partnership firms and individuals, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

3. Definitions

In this Code, unless the context otherwise requires,—

(1) "Board" means the Insolvency and Bankruptcy Board of India established under sub-section (1) of section 188;

(2) "bench" means a bench of the Adjudicating Authority;

(3) "bye-laws" mean the bye-laws made by the insolvency professional agency under section 205;

(4) "charge" means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage;

(5) "Chairperson" means the Chairperson of the Board;

(6) "claim" means—

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

(7) "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;

(8) "corporate debtor" means a corporate person who owes a debt to any person; (9) "core services" means services rendered by an information utility for—

(a) accepting electronic submission of financial information in such form and manner as may be specified;

- (b) safe and accurate recording of financial information;
- (c) authenticating and verifying the financial information submitted by a person; and
- (d) providing access to information stored with the information utility to persons as may be specified;
- (10) "creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder;
- (11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;
- (12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be"

5. Definitions

In this Part, unless the context otherwise requires,—

- (1) "Adjudicating Authority", for the purposes of this Part, means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013;
- (2) "auditor" means a chartered accountant certified to practice as such by the Institute of Chartered Accountants of India under section 6 of the Chartered Accountants Act, 1949;
- (3) "Chapter" means a Chapter under this Part;
- (4) "constitutional document", in relation to a corporate person, includes articles of association, memorandum of association of a company and incorporation document of a Limited Liability Partnership;
- (5) "corporate applicant" means— (a) corporate debtor; or
(b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or
(c) an individual who is in charge of managing the operations and resources of the corporate debtor; or
(d) a person who has the control and supervision over the financial affairs of the corporate debtor;

Chapter II

Corporate Insolvency Resolution Process

6. Persons who may initiate corporate insolvency resolution process.

Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.

7. Initiation of corporate insolvency resolution process by financial creditor

(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.”

8. Insolvency resolution by operational creditor

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the repayment of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation.— For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.”

10. Initiation of corporate insolvency resolution process by corporate application.

(1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

(3) The corporate applicant shall, along with the application furnish the information relating to—

(a) its books of account and such other documents relating to such period as may be specified; and

(b) the resolution professional proposed to be appointed as an interim resolution professional.

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—

(a) admit the application, if it is complete; or

(b) reject the application, if it is incomplete:

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section.

12. Time-limit for completion of insolvency resolution process

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

14. Moratorium

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

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

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

31. Approval of resolution plan

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

(a) the moratorium order passed by the Adjudicating

Authority under section 14 shall cease to have effect; and
 (b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

33. **Initiation of liquidation**

(1) Where the Adjudicating Authority, —

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall—

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the

prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

CHAPTER VI ADJUDICATING AUTHORITY FOR CORPORATE PERSONS

60. Adjudicating Authority for corporate persons

(1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy of a personal guarantor of such corporate debtor shall be filed before such National Company Law Tribunal.

(3) An insolvency resolution process or bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.”

19. Section 6 provides that where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter. Section 7 deals with initiation of corporate insolvency resolution process by financial creditor and Section 8 deals with insolvency resolution by operational creditor. Section 10 provides for initiation of corporate insolvency resolution process by corporate application. A corporate applicant may make an application to the adjudicating authority alongwith the corporate debtor's books of accounts and such other documents. The adjudicating authority shall admit the application within fourteen days from the date of receipt of the application, if it is complete or reject the application, if it is incomplete. Section 10 (5) clearly proceeds to mention that the corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this Section. Section 12 relates to time limit for completion of insolvency resolution process. This Section prescribes a time limit of 180 days, extendable by a further 90 days, for the completion of corporate insolvency resolution process. The application for the extension can only be made by the resolution professional and has to be supported by a resolution passed at a meeting of the committee of creditors by a majority of 75% of the voting shares. Section 14 provides that on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following namely the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.

20. Section 30 provides for the manner in which a resolution plan may be submitted by a resolution applicant. There are no restrictions on who can be a resolution applicant, subject to compliance with all applicable laws. This may even include promoters of the corporate debtor. This provision would facilitate proposals from persons interested in commercially viable but insolvent business to rescue such entities, creating value for all stakeholders in the process. The resolution professional shall submit each resolution plan, which conforms to the criteria provided under clauses (a) to (f) of Section 30 (2) to the committee of creditors who shall approve a resolution plan by a 75% majority of voting shares. Only thereafter the resolution professional may submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority as per provisions contained under Section 30 (6) of the IBC 2016. Section 31 deals with approval of resolution plan and provides that if the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. Sufficient safeguards are provided in favour of creditors. Even Section 31 (2) provides that where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan. Section 33 provides for the liquidation of the corporate debtor.

21. Section 60 stipulates that the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof, shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located. As per provisions contained

under Section 60 of the IBC, 2016 the National Company Law Tribunal shall be the Adjudicating Authority for insolvency resolution and liquidation of corporate debtors and also lays down the criteria for establishing the territorial jurisdiction of the Tribunal. The insolvency resolution or bankruptcy proceedings relating to a personal guarantor of a corporate debtor shall also be filed before the National Company Law Tribunal.

22. It is relevant to indicate at this stage that in exercise of the powers conferred under Sections 5, 7, 9, 14, 15, 17, 18, 21, 24, 25, 29, 30, 196 and 208 read with Section 240 of the IBC, 2016 the Insolvency and Bankruptcy Board of India has made 'Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016' (in short, Regulations of 2016) on 30th November, 2016. Regulation 3 under Chapter-II provides the eligibility for resolution professional and Regulation 10 under Chapter-IV deals with substantiation of claims. Regulation 35 under Chapter IX (Insolvency Resolution Process Costs) deals with liquidation value. Regulation 36 provides the information memorandum. Regulation 36 (f) provides details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party.

23. After respective arguments have been advanced, the factual situation, which is so emerging from the record in question, is that the petitioners are the ex-directors of the company (in liq.). The SBI had filed the Original Application in question before the DRT for recovery of Rs.72,75,29,053.71 against the company (in liq) as the principal borrower and the petitioners as the guarantors. The petitioners have moved applications for stay of proceeding against them. By the impugned order dated 6.7.2017 the DRT has stayed the proceeding against the company (in liq.) on the basis of an order passed by the National Company Law Tribunal, Allahabad dated 30.5.2017 imposing a Moratorium on legal proceedings under

Section 14 of the IBC, 2016 and directed the petitioners to file written statement and give the details of pending applications with foreign authorities for permanent immigration or visa or travelling permits; details of properties they are having in foreign lands and in India; details of business exclusively or under partnership in foreign lands and in India; details of all their movable and immovable assets including bank accounts deposits on affidavits. No doubt the liability is co-extensive, but the entire proceeding is still in fluid stage and for the same cause of action, two split proceedings cannot go simultaneously before the DRT as well as NCLT.

24. The object of IBC, 2016 is categorical and as per provisions contained under Section 60 (1) the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof, shall be the National Company Law Tribunal. In the present matter, admittedly the proceeding has been initiated under the IBC 2016 and the Moratorium under Section 14 of IBC 2016 has already been issued by the NCLT. The NCLT is already ceased with the process of insolvency resolution against the company (in liq.) under IBC 2016 and moreover, the SBI has also put their appearance in the said proceedings regarding its claim. At no point of time the SBI has disassociated itself from the proceeding before the NCLT and it is actively participating in the proceeding.

25. Moreover, the NCLT in its order dated 30.5.2017 prohibited the institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority, transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein, any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the SARFAESI Act, 2002, the recovery of any

property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

26. In **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & ors** (1998) 8 SCC 1, Hon'ble Supreme Court has observed that the power to issue prerogative writs under Section 226 of Constitution of India is plenary in nature and is not limited by any other provision of the Constitution of India. Under Article 226 of Constitution of India, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction.

27. In **Punjab National Bank Ltd vs. Shri Vikram Cotton Mills and another** AIR 1970 SC 1973 Hon'ble Supreme Court held as under:-

13. We are, however, unable to agree with the High Court that the suit filed was premature. The Bank was under the terms of the bond executed by Ranjit Singh entitled to, claim at any time the money due from the Company as well as Ranjit Singh under the promissory note and the bond. The suit could not, therefore, be said to be premature. The High Court instead of dismissing the suit should have stayed it till "the ultimate balance" due to the Bank from the Company was determined. We deem it necessary to observe that a binding obligation created under a composition under s. 391 of the Companies. Act, 1956, between the; Company and its creditors does not affect the liability of the surety unless the contract of suretyship otherwise provides. As observed in Halsbury's. Laws of England, Vol. 6, 3rd Edn. Art.1555, at p. 771:

"A scheme need not expressly reserve the rights of any creditors against sureties for debts; of the company, as such rights are unaffected by a scheme".

It was held in *Re. Garner's Motors Ltd.*(1) that the scheme when sanctioned by the Court has a statutory operation and the scheme does not release other persons not parties. to the scheme from their obligations.'

14. The High Court, in our judgment, should have stayed the suit and after "the ultimate balance" due by the Company was determined the Court should have proceeded to decree the claim according to the provisions of cl. 4 of the bond.

15. We accordingly modify the decree passed by the Trial Court and declare that the rights of the Bank against the Company are governed by the scheme: sanctioned by the High

Court of Allahabad in Company Case No. 16 of 1956 by their judgment dated May 21, 1956. Liability of Ranjit Singh being only for payment the ultimate balance' which remains due on the cash-credit account with the Bank in favour of the Company. The Court will, when such ultimate balance is determined, proceed to pass a decree in favour of the Bank."

28. In **Oshi Foods Limited and ors vs. State Bank of India** AIR 1997 (2) MPLJ 643 learned Single Judge of the High Court of Madhya Pradesh (Gyalior Bench) held that unless and until the liability of the company is determined the guarantors cannot be held liable. It may be possible to proceed against the guarantors, if the decree is obtained against the company which is going to be executed. Therefore, in such a situation when a composite suit has been filed and when leave of the Company Court is required for proceeding against the company then the conclusion is inescapable that the suit cannot proceed unless and until the leave of the Company Court is obtained.

29. In the present matter, it has been urged that while passing the impugned order the DRT has failed to take notice of Part- III of IBC, 2016, which prevails over the provisions of the Act of 1993. It has also been urged that the entire proceeding before the DRT is completely without jurisdiction precisely in the backdrop that once the proceeding has already been commenced under IBC, 2016 and Moratorium under Section 14 of IBC, 2016 has already been issued and even in the said proceeding the parties have put their appearance before the insolvency professionals, then the impugned proceeding against the guarantors of principal debtor is per se bad. The argument advanced by Shri Navin Sinah is also fortified on the ground that once the liability is still in fluid situation and the same has not been crystallized, then in such situation two parallel/split proceedings in different jurisdiction should be avoided, if possible. In the aforementioned circumstances, the objection so raised by learned counsel for the respondent bank regarding alternative remedy cannot sustain and is rejected..

30. The judgments, which have been relied upon by Shri Satish

Chaturvedi, learned counsel appearing for the respondent bank, are distinguishable and the same would not be attracted under the present facts and circumstances, as indicated above.

31. This Court is of the considered opinion that in the aforementioned facts and circumstances once the sufficient safeguards are provided in the IBC, 2016 & the regulations framed thereunder to the bank, and even the liability has not been crystallized either against the principal debtor or guarantors/mortgagors at present, then the proceeding, which is pending before the Debt Recovery Tribunal, Allahabad cannot go on and the same is stayed till the finalisation of corporate insolvency resolution process or till the NCLT approves the resolution plan under sub section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, as the case may be.

32. With the aforesaid directions/observations, both the writ petitions are disposed of.

Order Date :-06.9.2017

RKP