



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUMMONS FOR JUDGMENT NO. 12 OF 2019
IN
COMMERCIAL SUMMARY SUIT NO. 238 OF 2019**

IL & FS Financial Services Limited

...Applicant

(Org. Plaintiff)

IN THE MATTER BETWEEN

IL & FS Financial Services Limited, a
Company incorporated under the
provisions of the Companies Act, 1956
and having its Registered Officer at the
IL & FS Financial Centre, Plot C-22, G
Block, Bandra-Kurla Complex, Bandra
(East), Mumbai 400 051.

...Plaintiff

VERSUS

1. Serveall Constructions Private
Limited, A-20, Kailash Colony,
New Delhi – 110 048.

Also at :

HDIL Towers, 9th Floor, Anant
Kanekar Marg, Station Road,
Bandra (E), Mumbai 400 051.

2. Housing Development and
Infrastructure Limited, 9-01, HDIL
Towers, Anant Kanekar Marg,
Bandra East, Mumbai – 400 051.

3. Mr. Rakesh Wadhawan,
Wadhawan House, Plot No. 32/A, Union Park
Road, Bandra (W), Mumbai – 400 050.

Also at :

HDIL Towers, 9th Floor, Anant
Kanekar Marg, Station Road, Banra
(E), Mumbai 400 051.

4. Mr. Sarang Wadhwan,
Wadhwan House, Plot No. 32/A, Union Park
Road, Bandra (W), Mumbai – 400 050.

Also at:

HDIL Towers, 9th Floor, Anant
Kanekar Marg, Station Road, Banra
(E), Mumbai 400 051.

...Defendants

Mr. Rohan Savant, Mr. Aman Saraf a/w. Mr. Sachin
Chandarana and Ms. Aishwarya Mehta i/b. Manilal Kher
Ambalal and Co., for the Plaintiff.

CORAM : GAURI GODSE J.

RESERVED ON: 2nd DECEMBER 2025

PRONOUNCED ON: 6th APRIL 2026

JUDGMENT:

1. This summary suit is filed to recover a sum of Rs.
203,66,31,506/- arising out of and in respect of the term loan
facilities, availed by defendant no.1 and guaranteed by

defendant nos. 2 to 4. Pursuant to a query made by the court as recorded in order dated 17th September 2025, in the summons for judgment, an additional affidavit is filed by the plaintiff to place on record the order dated 20th August 2019, passed by the National Company Law Tribunal (“NCLT”), Mumbai Bench under Section 7 read with Section 14 of the Insolvency and Bankruptcy Code 2016 (‘IB Code’) against defendant no.2. The plaintiff has also placed on record copy of the case status of petition filed against defendant nos. 3 and 4 before the NCLT, which refers to the order against defendant no.3. A separate order under Section 95 under the IB Code against defendant no.4 is also placed on record.

2. Learned counsel for the plaintiff submitted that despite the said orders, the summons for judgment can proceed qua defendant no.1, who is the principal borrower. Hence, the plaintiff has filed the additional affidavit stating that the plaintiff seeks to proceed only against defendant no. 1 at this stage and shall not press any interim relief against defendant nos. 2 to 4 at this stage, by reserving the right to proceed after the moratorium ceases to operate against them.

3. Heard learned counsel for the plaintiff on this preliminary point. None appeared for the defendants, though served.

4. The plaintiff is a non-banking financial company engaged in financial and advisory services. Defendant no.1 is a company incorporated and registered under the provisions of the Companies Act, 1956. Defendant no.1 has been arrayed in the present summary suit in its capacity as the borrower pursuant to the facilities availed by it from the plaintiff. Defendant no.2 is a company incorporated and registered under the provisions of the Companies Act, 1956 and is the Corporate Guarantor. Defendant nos. 3 and 4 are the personal guarantors. Defendant nos. 2 to 4 have been arrayed in the summary suit in their capacity as guarantors to the facilities availed by defendant no.1 from the plaintiff.

5. By an Order dated 20th August 2019, passed by the NCLT and confirmed by the NCLAT by order dated 13th July 2020, a moratorium under Section 14 of the IB Code has come into effect against defendant no. 2. On 18th December 2021, applications under Section 95 of the IB Code were filed against defendant nos. 3 and 4. Consequently, an interim moratorium under Section 96 of the IB Code has come into effect. The company petition against defendant no. 3 was reserved for orders on 24th July 2025. The Company Petition against defendant no. 4 is sub judice.

6. Learned counsel for the plaintiff submitted that Section 96 of the IB Code is part of Part III of the IB Code, which applies to matters relating to individuals and partnership firms, in terms of Section 78 of the IB Code. The provisions of the moratorium contained in Section 96 of the IB Code would not apply to a corporate debtor. Insolvency proceedings in respect of a personal guarantor for a corporate debtor are covered separately under Section 60 of the IB Code. Section 60(1) and (2) provide that the NCLT would have jurisdiction in respect of the insolvency of personal guarantors. The insolvency of a corporate debtor and a personal guarantor falls under Part II of the IB Code. As opposed to this, Section 179 of the IB Code provides that the DRT shall have jurisdiction in relation to insolvency matters of individuals and firms. To support his submissions, the learned counsel for the plaintiff relied upon the decision of the Apex Court in ***Embassy Property Developments v. State of Karnataka***¹.

7. Learned counsel for the plaintiff submitted that the expression 'debt' appearing in Section 3(11) provides that "unless the context otherwise requires", which is required to

¹ (2020) 13 SCC 308.

be interpreted in the context of Section 96, the object of which is the protection to individuals and partnership firms and not to other personal guarantors, corporate guarantors or corporate debtors. The moratorium covers other entities only in respect of those debts where the individual under insolvency is the principal debtor. He submits that this is the object and purpose of Section 96 and also in line with the principles of subrogation under Section 140 of the Indian Contract Act, 1872. To support his submissions, the learned counsel for the plaintiff relied upon the decision of the Delhi High Court in ***Axis Trustee Services Ltd. v. Brij Bhushan Singal***², and the decision of the Apex Court in ***Saranga Anilkumar Aggarwal v. Bhavesh Dhirajlal Sheth***³.

8. Learned counsel for the plaintiff submitted that a proceeding filed or continued against the principal debtor or guarantors in respect of those debts where the individual debtor is a guarantor and not the principal borrower would only enure to the benefit of the individual debtor and would not affect his rights, whereas if proceedings were allowed to be filed or continued in cases where the individual debtor was a principal borrower then, if, any recovery was made

² 2022 SCC Online Del 3634

³ (2025) 4 SCC 629

from a guarantor, such guarantor would step into the shoes of the creditor and be entitled to claim such amounts from the individual debtor on principles of subrogation. To support his submissions, the learned counsel for the plaintiff relied upon the decision of the Apex Court in ***BRS Ventures Investment Ltd. v. SREI Infrastructure***⁴.

9. Learned counsel for the plaintiff submitted that in the context of maintainability of proceedings under Section 7 of the IB Code against a corporate debtor in respect of a principal borrower who was an individual, i.e. a sole proprietary concern, the Hon'ble Apex Court gave a harmonious and purposive interpretation to Section 5(5-A) defining "corporate guarantor" and observed that the corporate guarantor can also be a company guaranteeing the loan of an individual. To support his submissions, the learned counsel for the plaintiff relied upon the decision in ***Laxmi Pat Surana v. Union of India & Anr.***⁵.

10. Learned counsel for the plaintiff referred to the judgment in the case of ***Tata Capital v. Geeta Passi & Ors***⁶. In the facts of that case, an application under Section 95 of the IB

⁴ (2025) 1 SCC 456.

⁵ (2021) 8 SCC 481.

⁶ 2024 SCC Online Bom 1897

Code was filed by some other creditor against the principal borrower and one of the personal guarantors. The question that arose was whether arbitration proceedings could be continued against the heirs of the deceased personal guarantor, against whom no proceedings were filed under the IB Code. In this context, it was observed that a distinction cannot be carved out with respect to the 'debt', and the consideration was that the debt of the principal borrower was the subject matter of the application under Section 95 of the IB Code.

11. According to the learned counsel for the plaintiff, the said decision does not consider a case where the debt is that of a corporate entity, i.e., a corporate debtor as defined in Section 3(8) IB Code. The IB Code distinguishes between a corporate debtor, a corporate guarantor under Section 5(5-A), a person under Section 3(23), and a personal guarantor under Section 5(22). He submitted that there is a marked distinction between a debtor and a guarantor, and more so when an individual is a guarantor.

12. Learned counsel for the plaintiff submitted that in ***Tata Capital***, it was observed that the decision in ***Axis Trustee***

will have to be read in the context of what has been said regarding Section 96 of the IB Code in ***Dilip B. Jiwrajka Vs Union of India***⁷. Hence, according to the learned counsel for the plaintiff, the observations of the Delhi High Court in ***Axis Trustee***, in paragraphs 35 and 37, would hold the field. Therefore, he submitted that, despite the moratorium order under Section 14 in the proceedings pending against defendant no. 2, who is the corporate guarantor in this suit, and under Section 96 against defendants nos. 3 and 4, who are personal guarantors in this suit, the present suit can proceed against defendant no. 1. He submits that defendant no. 1 is the principal borrower in this suit and no proceedings under the IB Code are initiated against it; hence, this suit can proceed against defendant no. 1.

Point for consideration:

13. The question to be decided in the present suit is whether the order of moratorium under Section 14 of the IB Code in the proceedings initiated against defendant no. 2, who is the corporate guarantor in this suit and the interim moratorium imposed under Section 96 of the IB Code in the proceedings initiated against defendant nos. 3 and 4, who are the

⁷ (2024) 5 SCC 435

personal guarantors in this suit, would apply qua defendant no. 1, who is the principal borrower in this suit against whom no insolvency proceedings have been initiated?

Analysis:

14. The insolvency proceedings of defendant no. 2 (corporate guarantor in the present suit), i.e. Housing Development and Infrastructure Ltd., is a Corporate Insolvency Resolution Process (“CIRP”) initiated by Bank of India under Section 7 of the IB Code on the ground that Housing Development and Infrastructure Ltd., i.e. the Corporate Debtor, committed default in repayment of the facilities. NCLT admitted the application and ordered a moratorium under Section 14.

15. A company petition under Section 95 is filed by Unity Small Finance Bank Ltd., the creditor, against its debtors, defendant nos. 3 and 4 (personal guarantors in this suit) for initiating the Insolvency Resolution Process (“IRP”). Hence, an interim moratorium has commenced pursuant to Section 96 of the IB Code.

16. Thus, the CIRP proceedings against defendant no. 2, who is the corporate guarantor in the present suit and the

IRP proceedings against defendants nos. 3 and 4, who are the personal guarantors in this suit, initiated by the respective creditors, shall enure to their benefit. Defendant no. 1 is the principal borrower against whom no proceedings are initiated under the IB Code. Therefore, if the resolution plan is approved in the CIRP and IRP proceedings, the guarantors in this suit may get a discharge from their liability under the guarantee. However, it will not amount to the discharge of the principal borrower, i.e. defendant no. 1, from the liability to repay the debts as claimed in this suit by its creditor, i.e. the plaintiff.

17. In view of Section 14(1)(a) of the IB Code, the order of moratorium prohibits the institution 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. Thus, the prohibition on continuing the pending suit applies only to the corporate debtor. The CIRP proceedings are initiated against defendant no. 2 as a corporate debtor. In the present suit, defendant no. 2 is the corporate guarantor for the financing provided by the plaintiff to defendant no. 1, who is the principal borrower. No proceedings are initiated against

defendant no. 1 under the IB Code. Therefore, the moratorium ordered under Section 14 would not apply to defendant no. 1, and the moratorium order cannot prohibit the continuation of the suit against defendant no. 1

18. So far as the effect on the present suit by the interim moratorium imposed in view of Section 96 of the IB Code pursuant to the application under Section 95 of the IB Code against defendant nos. 3 and 4 are concerned, it is necessary to understand the provision of Section 96 of the IB Code, which reads thus:

“96. Interim-moratorium. – (1) when an application is filed under section 94 or section 95 –

(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and

(b) during the interim-moratorium period –

(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(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.”

19. In Section 96(1)(a), the words used are “in relation to all the debts” and in Section 96(1)(b), the words used are “any debt”. Section 96(1)(b)(ii) says “the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt”. Therefore, it needs to be ascertained to whom and for which debt the benefit of the interim moratorium would apply.

20. Sections 94 and 95 are included in Part III of the IB Code, which applies to IRP proceedings for individuals and partnership firms. An interim moratorium under Section 96 is

imposed when an application is filed under Section 94 or 95 of the IB Code. An application under Section 94 is made by a debtor. As per sub-section (3) of Section 94, an application shall be submitted only in respect of debts which are not excluded debts. The definitions for Part III are provided in Section 79 of Chapter I of Part III. Section 79(15) defines “excluded debt”. An application under Section 95 is made by the creditor. As per sub-section (4)(a) of Section 95, an application shall be accompanied with details and documents relating to the debts owed by the debtor to the creditor.

21. Part I of the IB Code provides for the definitions in Section 3 applicable to the IB Code. As per Section 3(8) of the IB Code, a “corporate debtor” means a corporate person who owes a debt to any person. A “corporate person” is a company as defined under Section 3(7) of the IB Code. Section 3(11) of the IB Code defines a “debt” as a liability or obligation in respect of a claim due from any person, and includes both financial and operational debt. Therefore, the words “any debt” used in Section 96 of the IB Code need to be construed in the context of an application made under Sections 94 or 95 of the IB Code, read with the other provisions governing applications for the IRP proceeding.

The application under Sections 94 or 95 can be admitted or rejected. If admitted, the moratorium under Section 101 shall be imposed, and the ultimate result would be a repayment plan and a discharge order after following the procedure as contemplated under Chapter III of Part III of the IB Code.

22. Defendant nos. 3 and 4 are the personal guarantors in the present suit, and in a separate IRP proceedings initiated by different creditors against them as debtors, a moratorium is imposed under Section 96 of the IB Code. In view of Section 96(1)(a) of the IB Code, an interim moratorium commences in relation to all the debts and shall cease to have effect on the date of admission of the application. In view of Section 96(1)(b), during the interim moratorium period, any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed, and the creditors of the debtor shall not initiate any legal action in respect of any debt. Therefore, in the present case, it is necessary to examine whether the benefit of the interim moratorium in view of the IRP proceedings for the guarantors can also be extended to defendant no. 1, who is the principal borrower, against whom no proceedings under the IB Code are initiated.

POSITION OF LAW:

23. To understand the applicability of the interim moratorium contemplated under Section 96 of the IB Code, in the present case, it is necessary to correctly understand the well-established legal principles.

24. In ***SBI Vs. V. Ramakrishnan***, the point for consideration before the Hon'ble Apex Court was whether the moratorium imposed under Section 14 in the CIRP proceedings initiated by the corporate debtor under Section 10 of the IB Code would also apply to a personal guarantor to the corporate debtor. The Hon'ble Apex Court held that a plain reading of the section leads to the conclusion that the moratorium referred to in Section 14 can have no manner of application to personal guarantors of a corporate debtor. The Apex Court held that the object of the Code is not to allow such guarantors to escape from an independent and co-extensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them, and thus the moratorium mentioned in

Section 101 would cover such persons, i.e. who have given a guarantee, as such moratorium is in relation to the debt and not the debtor.

25. In ***Embassy Property Developments Pvt. Ltd.***, before the Apex Court, one of the respondents was a financial creditor who had moved an application before the NCLT under Section 7 of the IB Code against the corporate debtor, who was also one of the respondents before the Apex Court. NCLT admitted the application and declared a moratorium under Section 14 of the IB Code. The question that arose for consideration was whether the High Court could, under Articles 226/227 of the Constitution, interfere with an order passed by NCLT in a proceeding under the IB Code, despite the availability of a statutory alternative remedy of appeal to NCLAT. The Apex Court observed that the NCLT is not even a civil court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognisance is either expressly or impliedly barred. It is thus held that NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which it is called upon to administer. In the facts of that case, it was

held that NCLT did not have jurisdiction to entertain an application against the Government for a direction to execute supplemental lease deeds for the extension of the mining lease.

26. In ***Dilip B. Jiwrajka***, the petitioners challenged the constitutional validity of Sections 95 to 100 of the IB Code before the Apex Court. The Hon'ble Apex Court observed that the crucial words which are used both in clause (b)(i) and clause (b)(ii) of sub-section (1) of Section 96 are "in respect of any debt". These words indicate that the interim moratorium, which is intended to operate by the legislature, is primarily in respect of a debt as opposed to a debtor. It is held that in paragraph 58 as under:

"**58.** This must be contra-distinguished from the provisions for moratorium which are contained in Section 14 in relation to CIRP under Part II. Section 14(1)(a) provides that on the insolvency commencement date, the institution of suits or continuation of pending suits or proceedings against the corporate debtor, including proceedings in execution shall stand prohibited by an order of the adjudicating authority. Clause (b) of sub-section (1) of Section 14 empowers the

adjudicating authority to declare a moratorium restraining the transfer, encumbrance, alienation or disposal by the corporate debtor of any of its assets or any legal right or beneficial interest therein. Significantly, the moratorium under Section 14 operates on the order passed by an adjudicating authority. ***The purpose of the moratorium under Section 96 is protective. The object of the moratorium is to insulate the corporate debtor from the institution of legal actions or the continuation of legal actions or proceedings in respect of the debt.***

emphasis applied by me

27. In the decision of the Delhi High Court in ***Axis Trustees Services Ltd***, the defendants were the ex-promoters of the corporate debtor against whom CIRP proceedings were initiated by another creditor. The defendants had given a personal guarantee for the facility given to the corporate debtor. As part of the resolution plan, amounts were paid, and the financial creditors were given the right to recover any outstanding financial debt owed by the borrower from the guarantors under the personal guarantee issued by them. The due amount was not paid to the financial creditors.

Hence, the suits were filed. The issue thus arose as to whether the suits could proceed against the defendants in view of applications under section 95 of the IB Code against both defendants. The application against defendant no. 1 was filed under section 95 of the IB Code as a creditor of the corporate debtor/borrower for whom defendant no. 1 stood as a guarantor. Therefore, the proceedings in the suits were liable to be stayed in respect of defendant no. 1.

28. Before the Delhi High Court, the defendants were both independent guarantors in respect of the corporate debtor, with joint and several liability. It was thus held that the creditors would have an independent recourse against either of the guarantors, and the inability to recover against one of the guarantors would not come in the way of making recoveries against the other guarantors. Even in terms of section 43 of the Indian Contract Act, 1872, a plaintiff can choose to proceed against one of the co-promisors. Further, sections 44 and 138 of the Contract Act provide that discharge of one of the parties/sureties does not amount to discharge of the other party/ surety. Therefore, it was held that the interim moratorium under section 96 in respect of

one of the guarantors would not ipso facto apply against a co-guarantor.

29. The Delhi High Court has held that the language of section 96(1) of the IB Code cannot be stretched to include all co-guarantors within the ambit of the interim moratorium. The reference to "all the debts" in section 96(1)(a) has to be in respect of all debts of a particular debtor, which is clear from the language used in section 96(1)(b)(ii) to the effect that "the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt". Therefore, the effect of the interim moratorium is limited to the debts of a particular debtor. It was observed that in the judgment of **V. Ramakrishnan**, the observations made by the Supreme Court were in the context of a moratorium under section 101 applying to guarantors of debts of individuals and firms. The Delhi High Court relied upon the legal principles settled by the Apex Court in **Embassy Property Developments Pvt. Ltd.** and held that the NCLT would be the appropriate Adjudicating Authority in respect of insolvency proceedings initiated against the defendants in their capacity as personal guarantors for the corporate debtor and the interim

moratorium under section 96 would be operable only for defendant no. 2 in view of the insolvency proceedings against defendant no. 2 under section 95 of the IB Code.

30. In the decision of this court in ***Tata Capital Ltd.***, one SMC, a proprietary concern, was the principal borrower. Mr. Tarun Kapoor, the proprietor, was the guarantor. Mrs. Pavan Kapoor, Mr. B.L. Passi and Rameshwar Sweets and Namkeens Pvt. Ltd. also stood as guarantors. Tata Capital Ltd. initiated arbitration proceedings against the borrower and the guarantors, as the borrower had committed a default. Mr. B.L. Passi passed away; his heirs were made parties to the arbitration. Pending the said arbitration proceedings, another creditor, Volkswagen Finance Pvt. Ltd., filed proceedings in NCLT against SMC and one of the personal guarantors, Mrs. Pavan Kapoor, and an interim moratorium was imposed under Section 96. Therefore, on an application made by Mr. Tarun Kapoor and Mrs. Pavan Kapoor, the arbitral tribunal stayed the arbitration proceedings initiated by Tata Capital Ltd qua them and directed to continue the proceedings against the other two guarantors. One of the legal heirs of Shri. B.L. Passi applied before the learned

Arbitrator to stay the proceedings in view of the moratorium under Section 96. Accordingly, the learned Arbitrator stayed the proceedings during the moratorium period. Thus, in the facts of this case, there were two different debts due to two different creditors against the same debtor, who was the principal borrower in the arbitration proceedings. The interim moratorium was imposed in the IRP proceedings of the principal borrower. The said order of stay passed by the arbitral tribunal is confirmed by the Bombay High Court.

31. This court in ***Tata Capital Ltd.*** referred to the legal principles settled by the Apex Court in ***SBI vs. V. Ramakrishnan***. This court held that in respect of the difference of moratorium as to what is contemplated by Sections 14 and 96 of the IB Code, the Apex Court categorically distinguished between the moratorium under Section 14 vis-à-vis Section 96 to hold that the protection of the moratorium under Section 96 is far greater than that of Section 14, in which pending legal proceedings in respect of the “debt” and not the debtor are stayed, as such moratorium is in relation to the debt and not the debtor. This Court held in paragraph 9 as under:

“9. A ‘debt’ is defined in Section 3(11) of the Insolvency and Bankruptcy Code to mean a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. It is material to note that Section 3(11) of the Insolvency and Bankruptcy Code when it defines “debt”, states it to be a liability or obligation in respect of a claim which is due from “any person”. The very use of the expression “any person”, would mean that no distinction can be drawn on the basis of, from whom the debt is due, a principal borrower or a guarantor. Section 96 of the Insolvency and Bankruptcy Code, also uses the expression “all the debts”, in clause (a) of sub-section (1) and “any debt”, in sub-clauses (i) and (ii) of clause (b) of sub-section (1). When Section 96 of the Insolvency and Bankruptcy Code, speaks of a moratorium in respect of “any debt”, the same would mean the entire debt, irrespective from whom it is due.”

32. This court relied upon the legal principles settled by the Apex Court in ***Dilip Jiwrajka***. It is held that the protection mandate of Section 96 of the IB Code is in respect of the “debt”, and not the debtor. It is further held that the

observations by the Delhi High Court in ***Axis Trustee Services Ltd.*** will have to be read in the context of what has been said about Section 96 of the IB Code in ***Dilip Jiwrajka***. Thus, this court approved the legal principles settled by the Delhi High Court in reference to the Apex Court's decision in ***Dilip Jiwrajka***. In the facts of the case, this court concluded as under:

“ **10.** Once this is so, then when the National Company Law Tribunal granted a moratorium under Section 96 of the Insolvency and Bankruptcy Code in favour of Mr Tarun Kapoor who was the principal borrower being the proprietor of SMC and Mrs Pavan Kapoor, being the guarantor, the same will have to be construed as a moratorium in respect of the entire “debt”. It is the “debt”, and its entitlement which has been claimed to be put before the learned arbitrator, for decision, in the arbitration proceedings. The claim does not make any distinction between a “debt”, vis-à-vis Mr Tarun Kapoor as a principal debtor, or the other parties thereto as the guarantors or even considering their co-extensive liability. The “debt”, is the debt of SMC/Tarun Kapoor as principal borrowers as well as of the guarantors. The “debt”, for the

purpose of the moratorium, cannot be severed into the “debt” of the principal borrower or for that matter of one of the guarantors on the one hand, and the debt of the other guarantors, in this case the legal heirs of original Respondent 4, Mr B.L. Passi. Though it can be said that the liability of original Respondent 4, late Mr B.L. Passi, was co-terminus with the principal borrower and the other guarantors, the liability of the present respondents, would be restricted to the assets of late Shri B.L. Passi, to the extent to which they would inherit the same. Be that as may, a distinction cannot be carved out, in respect of the “debt”, award in respect of which is claimed in the arbitration proceedings, for the purpose of continuation of the arbitral proceedings, between the liability of the principal borrower/guarantor who have been granted a moratorium and the others who have not approached the National Company Law Tribunal, as the word “debt”, as used in Section 96 of the National Company Law Tribunal, has to be held to be the “debt”, in its entirety and not otherwise.”

33. It is important to note that in the facts of the decision in ***Tata Capital Ltd.***, the IRP proceedings were initiated for the

principal borrower and one of the personal guarantors. This Court further held that there is no provision in the Arbitration and Conciliation Act, 1996, for splitting up arbitration proceedings by conceiving of a situation in which the arbitration proceedings are stayed against some of the parties and proceed against others. The arbitration proceedings will have to be decided in their entirety against all the parties, and the claimant's entitlement and the respondents' liabilities will be determined on the basis of evidence that may be led therein, which cannot be on a piecemeal basis. Thus, the arbitral tribunal's order staying the proceedings in view of the moratorium imposed under Section 96 of the IB Code was confirmed.

34. In ***Laxmi Pat Surana***, the question for consideration before the Apex Court was whether an action under Section 7 of the IB Code can be initiated by the financial creditor against a corporate person (being a corporate debtor) concerning a guarantee offered by it in respect of a loan account of the principal borrower, who had committed default and is not a "corporate person" within the meaning of the Code. The Apex Court held that the obligation of the

guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. It is held that there is no reason to limit the width of Section 7 IBC, for the liability and obligation of the guarantor to pay the outstanding dues would get triggered coextensively.

35. In ***BRS Ventures Investments Ltd.***, the successful resolution applicant was the appellant before the Apex Court. The appellant had paid the amount to the financial creditor, in full and final settlement of all its dues and demands submitted in the resolution plan. The financial creditor filed an application under Section 7 of the IB Code against the corporate debtor for the balance amount payable to the financial creditor under the loan facility. The adjudicating authority admitted the application, which the appellant challenged before NCLAT. A suspended Director of the corporate debtor also preferred an appeal against the said order of the adjudicating authority. By the judgment impugned before the Apex Court, both appeals were dismissed.

36. The Hon'ble Apex Court in ***BRS Ventures Investments Ltd.***, held that the liability of the surety and the principal debtor is coextensive, and the creditor has remedies to recover the amount payable by the principal borrower by proceeding against either or both of them. Sections 133 to 139 of the Contract Act deal with the discharge of surety, and without proceeding to recover the debt against the principal debtor, the creditor can proceed against the surety unless there is a contract to the contrary. The Apex Court referred to and relied upon the decision of the Apex Court in ***Lalit Kumar Jain v. Union of India***⁸, where the Apex Court dealt with the legal effect of approving the resolution plan in CIRP of the corporate debtor on the liability of the surety. In the context of Section 135 of the Contract Act, it was held that the contract between the creditor and the surety is independent; therefore, the approval of the resolution plan of the principal borrower will not amount to the discharge of the surety. It is further held that the same principles will apply when the resolution plan is approved in the CIRP of the surety, and it will not amount to the discharge of the principal borrower.

⁸ (2021) 9 SCC 321

37. It is held in ***BRS Ventures Investments Ltd.*** that there is a separate and distinct obligation on the borrower to pay the amount to the creditor, and such a transaction creates a right in favour of the creditor to proceed against the guarantor and borrower for recovery. It is thus held that, consistent with the basic principles of the Contract Act, the liability of the principal borrower and surety is coextensive; the IBC permits separate or simultaneous proceedings to be initiated under Section 7 by a financial creditor against the corporate debtor and the corporate guarantor. In the facts of the case, it was held that, by virtue of the CIRP process for the corporate guarantor, the corporate debtor does not obtain a discharge, and its liability to repay the loan amount to the extent it is not recovered from the corporate guarantor is not extinguished.

38. In ***Saranga Anilkumar Aggarwal***, the point for consideration was whether execution proceedings under Section 27 of the Consumer Protection Act, 1986, can also be stayed during an interim moratorium under Section 96 IB Code. The Apex Court held that a moratorium under Section 96 of the IB Code is distinct from a corporate moratorium

under Section 14 of the IB Code. Section 96 applies to individuals and personal guarantors and provides that during the interim moratorium period, “any legal action or proceedings relating to any debt shall be deemed to have been stayed”, and it applies only to “debt” as defined under the IB Code and not to regulatory penalties imposed for non-compliance with consumer protection laws. It is further held that the interim moratorium applicable to individuals and personal guarantors under Section 96 IBC is more limited in its scope, staying only “legal actions or proceedings in respect of any debt”. It thus held that, unlike the CIRP proceedings, which aim for a comprehensive resolution of the company's liabilities, the IRP proceedings are designed primarily to restructure personal debts and provide relief to the debtor.

Conclusions:

39. The Apex Court in ***Dilip Jiwrajka*** held that the purpose of the moratorium under section 96 is protective and that the object of the moratorium is to insulate the corporate debtor from the institution of legal actions or the continuation of legal actions or proceedings in respect of the debt. By referring to

these legal principles, this Court in **Tata Capital Ltd** held that the protection mandate of Section 96 of the IB Code is in respect of the debt, not the debtor. This Court further held that in the Arbitration Act, there was no provision for splitting up the proceedings against some of the parties and going ahead against some and the arbitration proceedings will have to be decided in their entirety against all the parties and the entitlement of the claimant and the liabilities of the respective response will have to be determined on the basis of evidence which may be there which cannot be on a piecemeal basis.

40. This Court, however, held that the decision of the Delhi High Court in **Axis Trustee Services Ltd** will therefore have to be read in the context of what has been said about Section 96 of the IB code, in **Dilip Jiwrajka**. This Court in **Tata Capital Ltd** further held that a distinction cannot be carved out in respect of the debt award in respect of which is claimed in the arbitration proceedings for the purpose of continuation of the arbitral proceedings between the liability of the principal borrower/guarantor who has been granted a moratorium and the others who have not approached the

NCLT as the word debt as used in Section 96 has to be held to be the debt in its entirety and not otherwise. Thus, the observations of this Court in **Tata Capital Ltd** are in the context of the facts of that case, where the applicability of the interim moratorium under Section 96 was considered to stay the arbitration proceedings against the principal borrower and two sets of guarantors. In the said case, an interim moratorium under Section 96 was imposed in the IRP proceedings against the principal borrower and one of the guarantors.

41. The legal principles settled by the Delhi High Court in **Axis Trustee Services Ltd.** are discussed in detail in the above paragraphs. The Delhi High Court held that the reference to "all the debts" in section 96(1)(a) has to be in respect of all debts of a particular debtor, which is clear from the language used in section 96(1)(b)(ii) to the effect that "the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt". It is therefore held that the effect of the interim moratorium is limited to the debts of a particular debtor, and the interim moratorium under Section 96 in respect of one co-guarantor would not ipso facto apply to the other co-guarantor.

42. The Apex Court in ***Embassy Property Developments Pvt. Ltd*** observed that the NCLT is not a civil court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognisance is either expressly or impliedly barred. It is thus held that NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which it is called upon to administer.

43. The Apex Court in ***BRS Ventures Investments Ltd.*** referred to and relied upon the decision of the Apex Court, in in ***Lalit Kumar Jain***, where the Apex Court dealt with the legal effect of approving the resolution plan in CIRP of the corporate debtor on the liability of the surety in the context of Section 135 of the Contract Act. It was held that the contract between the creditor and the surety is independent; therefore, the approval of the resolution plan of the principal borrower will not amount to the discharge of the surety. It is thus held that the same principles will apply when the resolution plan is approved in the CIRP of the surety. In such a case, the surety gets a discharge from his liability under the guarantee by operation of law or by involuntary process, and

it will not amount to the discharge of the principal borrower. It is thus held that in a loan transaction secured by a guarantee, the guarantor has an obligation to repay the loan amount to the creditor, and there is a separate and distinct obligation on the borrower to pay the amount to the creditor. Such a transaction creates a right in favour of the creditor to proceed against the guarantor and borrower for recovery. It is thus held that, consistent with the basic principles of the Contract Act, the liability of the principal borrower and surety is coextensive; the IBC permits separate or simultaneous proceedings to be initiated under Section 7 by a financial creditor against the corporate debtor and the corporate guarantor.

44. The Apex Court further held that if the surety pays the entirety of the amount payable under the guarantee to the creditor, Section 140 of the Contract Act provides a remedy to the surety to recover the entire amount paid by him in the discharge of his obligations. Therefore, the surety is invested with the rights of the creditor to recover from the principal debtor the amount paid under the guarantee. If the surety pays only a part of the amount payable to the creditor, the

equitable right the surety gets under Section 140 of the Contract Act will be confined to the debt he cleared.

45. Thus, the same basic principles under the Contract Act would apply to ascertain the benefit of the interim moratorium when IRP proceedings are initiated under Sections 94 or 95. In view of the legal principles, as discussed above, the liability of a guarantor and the principal borrower is coextensive; hence, a resolution plan approved in the IRP proceedings of the guarantor will enure to the benefit of only the guarantor, and he may be discharged of his liability under the terms of the guarantee. However, the principal borrower against whom no proceedings are initiated under the IB Code will not have its liability discharged under the resolution plan of the guarantor. The adjudication of the liability of the principal borrower would therefore fall within the jurisdiction of the civil court when no proceedings under the IB Code are initiated against the principal borrower. The company law tribunal would not have any jurisdiction to adjudicate the liability of a principal borrower when no proceedings under the IB Code are initiated against the principal borrower. Hence, the words “any debt” used in Section 96 of the IB

Code cannot be stretched to benefit the debt of the principal borrower, against whom no proceedings under the IB Code are initiated. Therefore, the benefit of the interim moratorium under Section 96 in the IRP proceedings for the personal guarantor cannot be extended to a principal borrower in a summary suit for recovery of amounts when no proceedings under the IB Code are initiated against such borrower.

46. Hence, in the present case, the interim moratorium imposed under Section 96 of the IB Code in the IRP proceedings initiated for defendants nos. 3 and 4, who are personal guarantors in the present suit, would not apply to defendant no. 1, who is the principal borrower in the present suit against whom no proceedings have been initiated under the IB Code. Hence, this suit shall remain stayed only against defendants nos. 2 to 4 until the respective moratorium orders are operative.

47. I have already recorded reasons in the above paragraphs that the prohibition in view of the moratorium order under Section 14 of the IB Code in the CIRP proceedings of defendant no.2 would not apply to defendant no. 1 in the present suit, who is the principal borrower

against whom no proceedings are initiated under the IB Code.

48. The suit shall therefore proceed against defendant no. 1.

[GAURI GODSE, J.]