



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2874 OF 2012
WITH CIVIL APPLICATION NOS. 782 OF 2025 AND 2413 OF
2025
IN WRIT PETITION NO. 2874 OF 2012

- 1] Morarjee Textiles Ltd.
through Mr. Ravi Sethia, Resolution
Having its registered office at Peninsula Spenta,
Mathuradas Mills Compound, Senapati
Bapat Marg, Lower Parel,
Mumbai – 400013.
- 2] Mr. Subhashchandra Kashimpuria,
adult and natural citizen of India
and Head – Finance & Accounts of
petitioner no.1, having his address at
Peninsula Spenta, Mathuradas Mills Compound,
Senapati Bapat Marg, Lower Parel,
Mumbai – 400013.

...PETITIONERS

Versus

- 1] Union of India,
through its Secretary, Ministry of Micro,
Small and Medium Enterprises,
Udyog Bhavan, New Delhi – 110011.
- 2] The Micro and Small Enterprises
Facilitation Council, Nagpur, a Council
Established under the provisions of
The Micro, Small and Medium Enterprises
Development Act, 2006, having its office
at Joint Director of Industries, Udyog
Bhavan, 2nd Floor, Civil Lines, Nagpur.
- 3] D.C. Weaving Mills Pvt. Ltd.
a company incorporated and registered
under the provisions of the Companies
Act, 1956 and having its registered
office at Plot No. G-16-1,

MIDC Industrial Area, Post Salaidhaba
via Hingna, Butibori, District – Nagpur
Through its Director.

...RESPONDENTS

WITH
WRIT PETITION NO. 3075 OF 2012

Mr. Harsh Piramal,
adult, natural citizen of India,
and Executive Director of Respondent No.4,
having his office at Peninsula Spenta,
Mathuradas Mills Compound,
Senapati Bapat Marg, Lower Parel,
Mumbai – 400013.

...PETITIONER

Versus

- 1] Union of India,
through its Secretary, Ministry of Micro,
Small and Medium Enterprises,
Udyog Bhavan, New Delhi – 110011.
- 2] The Micro and Small Enterprises
Facilitation Council, Nagpur, a Council
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via Hingna, Butibori, District – Nagpur
Through its Director.
- 4] Morarjee Textiles Ltd.
a company incorporated and registered
under the Companies Act, 1956,

Having its registered office at Peninsula Spenta,
Mathuradas Mills Compound, Senapati
Bapat Marg, Lower Parel,
Mumbai – 400013.

...RESPONDENTS

WITH
WRIT PETITION NO. 3076 OF 2012

Mrs. Urvi A. Piramal,
adult, natural citizen of India,
and Chairperson of Respondent No.4,
having her office at Peninsula Spenta,
Mathuradas Mills Compound,
Senapati Bapat Marg, Lower Parel,
Mumbai – 400013.

...PETITIONER

Versus

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through its Secretary, Ministry of Micro,
Small and Medium Enterprises,
Udyog Bhavan, New Delhi – 110011.
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via Hingna, Butibori, District – Nagpur
Through its Director.
- 4] Morarjee Textiles Ltd.
a company incorporated and registered

under the Companies Act, 1956,
Having its registered office at Peninsula Spenta,
Mathuradas Mills Compound, Senapati
Bapat Marg, Lower Parel,
Mumbai – 400013.

...RESPONDENTS

WITH
WRIT PETITION NO. 3078 OF 2012

Mr. Rajendra Rewari,
adult, natural citizen of India,
and Managing Director of Respondent No.4,
having his office at Peninsula Spenta,
Mathuradas Mills Compound,
Senapati Bapat Marg, Lower Parel,
Mumbai – 400013.

...PETITIONER

Versus

- 1] Union of India,
through its Secretary, Ministry of Micro,
Small and Medium Enterprises,
Udyog Bhavan, New Delhi – 110011.
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Bapat Marg, Lower Parel,
Mumbai – 400013.

...RESPONDENTS

Mr. Akshay Doctor, Counsel (through VC) with Mr. V.V. Sharma,
Counsel for the petitioners in Writ Petition No. 2874/2012.
Mr. Simil Purohit, Senior Counsel with Mr. Dhruv Gandhi, Ms
Khushbu Chhajed, Counsel (through VC) with Mr. A.J. Bhoot,
Counsel for respondent no.3.
None for respondent nos. 1 and 2.

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**CORAM : ANIL L. PANSARE AND
NIVEDITA P. MEHTA, JJ.**

**ARGUMENTS WERE HEARD ON : 30/3/2026
JUDGMENT IS PRONOUNCED ON : 7/4/2026**

JUDGMENT (PER : ANIL L. PANSARE, J.) :

WRIT PETITION NO. 2874 OF 2012
WITH CIVIL APPLICATION NOS. 782 OF 2025 AND 2413 OF
2025
IN WRIT PETITION NO. 2874 OF 2012

Heard Mr. Akshay Doctor, learned Counsel for the
petitioners, and Mr. Simil Purohit, learned Senior Counsel for
respondent no.3. None for respondent nos.1 and 2.

2] The facts necessary to decide the petition and the
applications are as under :

3] Petitioner no.1 (formerly known as 'Morarjee

Brembana Limited) issued a work order to respondent no.3 for weaving clothes/fabrics in accordance with the conditions set out therein. Petitioner no.2 is Head – Finance and Accounts of petitioner no.1. The parties entered into an agreement. The work commenced. Later on, there occurred dispute between the parties. Respondent no.3 filed a claim being Reference No. 25/2010 against petitioner no.1 before respondent no.2 under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (for short “MSME Act”). Petitioner no.1 filed its reply to respondent no.3’s claim, and also filed counter claim. Respondent no.2 passed the impugned award dated 20/3/2012 allowing respondent no.3’s claim, and directed petitioner no.1 to pay an amount of Rs.13,44,32,898/-. Accordingly, the petition came to be filed.

4] On 5/7/2012, this Court, while issuing Rule, directed the petitioners to deposit, in the Court, a sum equivalent to 75% of Rs.13,40,00,000/- within a period of three months as a condition for stay to the impugned award. This interim order was challenged before the Hon’ble Supreme Court in a Special Leave to Appeal (Civil) No. 27590/2012,

and on 28/9/2012, while issuing notice, the Supreme Court stayed the order passed by this Court to the extent of directing petitioners to deposit 75% of the amount in terms of the award, subject to the condition that the petitioners shall deposit 60% of the principal amount by way of bank draft or furnishing bank guarantee of a nationalized bank for an amount representing 60% of the principal amount in favour of the Registrar, Bombay High Court, Nagpur Bench. In compliance to the said order, the petitioners had furnished bank guarantee. The Supreme Court, vide order dated 13/2/2025, dismissed the appeal in following terms :

“5. After having heard the learned counsel appearing for the first appellant, we find no error in the impugned order. The submission of the learned counsel appearing for the first appellant is that there is an issue of jurisdiction involved as the third respondent was not an MSME and that is the reason why the appellant(s) invoked the extraordinary jurisdiction under Article 226 Constitution of India. He would, therefore, submit that without considering the existence of a prima facie case, the High Court ought not to have imposed an onerous condition of deposit of a sum equivalent to 75% of the awarded amount of Rs.13,40,00,000/- (Rupees Thirteen Crore Forty Lakh).

6. The efficacious remedy of taking recourse to Section 19 of the 2006 Act was available to the appellant(s). Obviously to avoid the condition of pre-deposit under Section 19 of the 2006 Act, that the recourse was taken to the writ jurisdiction. It is pertinent to note that the High Court has not dismissed the writ petition on the ground of availability of the

efficacious remedy. The High Court has only put a condition of deposit of a sum equivalent to 75% of the amount covered by the Award as a condition for stay. The Award is in the nature of a money decree and, therefore, we find absolutely no error in the view taken by the High Court.

7. *We are informed that the High Court has finally heard the pending writ petition and in November 2024, the judgment has been reserved which is not pronounced till date.*

8. *This Court vide order dated 28th September, 2012 granted stay to the appellant(s) subject to furnishing a bank guarantee which has been accordingly furnished by the appellant(s). The Registry of this Court is directed to encash the said bank guarantee furnished by the appellant(s) forthwith and transfer the amount of proceeds to the High Court of Judicature at Bombay, Nagpur Bench. As the judgment has been reserved by the High Court, we direct the Registrar (Judicial) of the High Court of Judicature at Bombay, Nagpur Bench, to bring this order to the notice of the concerned Bench and the fact that the amount of bank guarantee has been transferred to the High Court. This will enable the High Court to pass appropriate order regarding disbursement/withdrawal of the bank guarantee amount after hearing the parties. Till the time the High Court deals with the issue of disbursement/withdrawal of bank guarantee amount, the bank guarantee amount shall be invested by the High Court in an interest bearing fixed deposit with any nationalised bank.”*

5] Thus, the Supreme Court observed that efficacious remedy of taking recourse to Section 19 of MSME Act was available to the petitioners, and that, recourse to writ jurisdiction was taken to avoid the condition of predeposit under Section 19 of MSME Act. The Supreme Court took note

of the fact that the award under question is in the nature of money decree, and accordingly, held that there is absolutely no error in the view taken by the High Court directing the petitioners herein to deposit a sum equivalent to 75% of the amount covered by the award as a condition for stay. The parties, then, informed the Supreme Court that this Court has finally heard the Writ Petition in November – 2024, and the judgment has been reserved. The Supreme Court, then, referred to its order dated 28/9/2012 granting stay to the interim order and directed it's Registry to encash the said bank guarantee, and to transfer the amount of proceeds to this Court. This order was thereafter modified by the Supreme Court in view of the fact that the bank guarantee was furnished to this Court, and accordingly, the Registry of this Court was directed to encash the bank guarantee.

6] In our view, the reason why the Supreme Court directed to encash the bank guarantee is because it found no fault in the order passed by this Court directing the petitioners to deposit a sum equivalent to 75% of the amount covered by the award. We may note here that while granting interim relief,

the Supreme Court had directed the petitioners to deposit 60% of the principal amount by way of bank draft or to furnish a bank guarantee.

7] Thus, the emphasis was on depositing the amount, either by way of bank draft or by way of furnishing bank guarantee. The Supreme Court having found that there was absolutely no error in the view taken by this Court, directed Registry of this Court to encash the bank guarantee so that the order passed by this Court shall stand complied, to the extent of directions issued to the petitioners to deposit the amount. Its a different matter that the Supreme Court did not direct the petitioners to deposit 75% of the amount covered by the award in terms of the interim relief granted by this Court, the reason is obvious. The parties informed that this Court has finally heard the petition, and the judgment has been reserved. Thus, the Supreme Court expected immediate decision. Unfortunately, the judgment was not delivered at that time. Accordingly, we heard the matter afresh.

8] In the meantime, the Axis Bank Limited, having registered Office at Ahmedabad, approached the National

Company Law Tribunal, Mumbai Bench (NCLT), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short “IBC”) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of the petitioner - Company arising out of the term loan granted to the petitioner – Company. On 9/2/2024, the NCLT admitted the application filed under Section 7, and declared moratorium under Section 14 of IBC with consequential directions, which, amongst others, prohibit institution of suits or continuation of pending suits or proceedings against the corporate debtor, i.e., the petitioners herein, including execution of any judgment, decree or order in any Court of law, Tribunal, Arbitration Panel or other authorities. Mr. Ravi Sethia has been appointed as an Interim Resolution Professional (IRP) of the corporate debtor. Thereafter, a meeting of Committee of Creditors was held on 15/5/2024, and it was resolved to reappoint IRP as Resolution Professional (RP). Consequently, the Management of Affairs of the petitioner – Company (corporate debtor) has vested in RP, and the powers of the Board of Directors of corporate debtor stood suspended, and are being exercised by RP. Accordingly,

vide order dated 11/2/2026, we permitted RP to make necessary amendment to the petition and prosecute the petition.

9] In the meantime, both, RP and respondent no.3, have filed applications, being CAW Nos. 2413/2025 and 782/2025 respectively. Both are seeking permission to withdraw the amount deposited in this Court. According to RP, the amount, so deposited, forms part of assets of corporate debtor, and is subject to the ongoing CIRP under IBC. As against, respondent no.3 has put forth a plea that the provisions under Section 19 of MSME Act was made to allow the supplier to get his blocked working capital up to the point the litigation is put to rest.

10] Thus, the question that falls for consideration is, whether the amount deposited in the Court in terms of the interim order passed by this Court on 5/7/2012 read with order dated 28/9/2012 passed by the Supreme Court, is an asset of the Company or is an amount belonging to the bank, being the amount generated out of the bank guarantee issued by the bank to the petitioners towards compliance of Court's

order.

11] As noted earlier, this Court, in clear terms, directed the petitioners to deposit a sum equivalent to 75% of the amount covered by the award. The Supreme Court was pleased to uphold this order, and accordingly, directed the Registry of this Court to encash the bank guarantee. In that sense, we find that the amount deposited in the Court is towards compliance of order dated 5/7/2012.

12] Mr. Simil Purohit, learned Senior Counsel for respondent no.3, submits that the bank guarantee is an independent contract, and is not a subject matter of moratorium provisions, and therefore, is not an asset of corporate debtor. He vehemently argued that the decree (award) is in favour of respondent no.3, who is waiting for fruits of the decree for last thirteen years. He submits that amount derived from bank guarantee is not an asset of petitioner – Company, and therefore, the respondent no.3 will be entitled to receive the amount.

13] In support, he placed reliance upon a judgment of this Court in the case of *Palladian Hotels Private Limited*,

Mumbai Vs. Hotel Horizon Private Limited, Mumbai [AIR Online 2020 Bombay 1256]. The learned Single Judge of this Court held that moratorium under Section 14(1) of IBC does not prevent encashment of bank guarantee. The Court highlighted Section 14(3)(b) of IBC, which explicitly exempts surety in a contract of guarantee to a corporate debtor from moratorium provisions. The Court held that this statutory provision underscores that the guarantor (bank) is not subject to moratorium in the same manner as the corporate debtor. According to the learned Single Judge, an application to encash bank guarantee and release funds does not fall within the ambit of moratorium restrictions.

14] These findings were rendered in an application moved by the applicant therein requesting to encash the bank guarantee and secure release of funds. Such request was made despite imposition of moratorium under Section 14(1) of IBC. The order of NCLT, however, was challenged before the Hon'ble Supreme Court, which had stayed the order passed by NCLT. Further, the bank guarantee was issued in accordance with a consent order. The respondents therein, who was facing

insolvency proceedings, contested encashment ascertaining that the moratorium would bar such action. The learned Single Judge held that application to encash the bank guarantee and release funds was not categorized as an application for execution of award. The Court took note of the fact that the earlier order passed by the Court, which permitted encashment of bank guarantee, had achieved finality, thereby preventing the respondents from challenge it further.

15] Thus, the facts were altogether different. The order passed by NCLT declaring moratorium was stayed by the Supreme Court. The bank guarantee was issued in accordance with consent order. Further, the earlier order permitting encashment of bank guarantee had attained finality. In that view of the matter, the learned Single Judge was of the view that the respondents therein cannot challenge the encashment of bank guarantee. As against, in the instant case, this Court, while granting interim relief, had directed petitioner no.1 (now corporate debtor) to deposit 75% of the amount covered by the award. Thus, the Court did not direct petitioner no.1 to furnish bank guarantee nor was any such order passed by consent. The

order, so passed, was tested before the Supreme Court, which was pleased to uphold the order taking note of the fact that the petitioner approached this Court under Article 226 of the Constitution of India, despite availability of alternate remedy under Section 19 of MSME Act, only to avoid payment of deposit of 75%.

16] Thus, the Supreme Court upheld the order passed by this Court directing the petitioners to deposit 75% of the amount, and for this reason, it directed the Registry of this Court to encash the bank guarantee so that the order directing the petitioners to deposit the amount would be complied.

17] Thus, encashment of bank guarantee, in the present case, is not relatable to the situation considered by the learned Single Judge in the above case. Here, the moratorium proceedings have commenced, RP has been appointed, and respondent no.3 has submitted its claim, and in that sense, has submitted itself to the jurisdiction of moratorium proceedings. Thus, respondent no.3's claim will be considered in terms of the provisions of IBC.

18] Section 3(10) of IBC defines 'creditor' to mean 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. Respondent no.3 is decree holder, and therefore, will be a creditor before CIRP. That, in fact, is the reason why respondent no.3 has submitted its claim before RP.

19] In any case, for the reasons noted above, we are of the considered view that the directions issued by the Supreme Court to encash the bank guarantee is to comply order passed by this Court directing the petitioners to deposit the amount as a predeposit to entertain the petition. The amount so deposited would belong to corporate debtor (petitioner – Company), and therefore, is its asset.

20] We may consider here the judgment relied upon by RP in the case of *Siti Networks Ltd. Vs. Rajiv Suri [2024 SC Online Bombay 6665]*. The Division Bench of this Court at Principal Seat held that the money deposited by corporate debtor in a Court as security pursuant to a Court order prior to commencement of CIRP do not cease to be an asset of the corporate debtor merely because they are in the possession of

the Court. The Court clarified that such deposit serves as security for a potential dismissal of an appeal rather than constituting a transfer of title to the judgment creditor.

21] Thus, the law as it stands today is clear. While it is true that the bank guarantee per se is not the asset of the corporate debtor, its encashment may be depending on facts of each case. If the money deposited by corporate debtor in the Court is in terms of order passed by the Court prior to commencement of CIRP as a condition to consider the issue involved in the matter, then the deposit will be an asset of the corporate debtor. The amount so deposited will not change the status solely because the money was deposited post commencement of CIRP. It will remain asset of the corporate debtor (petitioner – Company). Accordingly, RP will be entitled to have control over this asset. The amount, so deposited, will have to be, therefore, released in favour of RP.

22] So far as the petition is concerned, the same, as such, is liable to be dismissed for two reasons; one is, that the interim order directing the petitioners to deposit 75% of the amount covered by the award has been not deposited.

However, and since the Supreme Court, while dismissing the appeal, took note of the fact that the petition was heard by the Division Bench of this Court and the petition was reserved for judgment, the Supreme Court did not direct the petitioners to deposit remaining amount, as directed by this Court, and therefore, we do not find it appropriate to dismiss the petition on this count. The second reason is that the petition is not maintainable, the petitioners having statutory remedy under Section 19 of MSME Act. The challenge to the impugned order is on multiple grounds, one of which pertains to the jurisdiction, which can be also raised before the appellate forum. The impediment, however, is commencement of CIRP, which prohibits continuation or filing any proceeding in terms of Section 14(1) of IBC.

23] Accordingly, and taking note of the fact that CIRP has commenced against petitioner – Company, and since RP is appointed, and further, since respondent no.3 has lodged its claim as creditor before it, we dispose of the petition with a direction to the Registry of this Court to release the amount deposited in this Court along with interest accrued thereon in

favour of RP for payment to creditors in accordance with the provisions of IBC. The application filed by the RP is, accordingly, partly allowed, and the application filed by respondent no.3 stands rejected. Civil Application No. 3462/2023 does not survive. It is disposed of accordingly.

24] The petition and the applications are disposed of in terms of above. No order as to costs.

JUDGE

JUDGE

At this stage, Mr. Simil Purohit, learned Senior Counsel for respondent no.3, makes a request to not release the amount for a period of four weeks from today saying that respondent no.3 will take a chance before the Hon'ble Supreme Court. The Counsel for RP has opposed the request. However, considering the present status of the proceedings under IBC, which is at the initial stage, we direct the Registry to release the amount after four weeks, unless otherwise ordered by the Hon'ble Supreme Court. The Registry shall take note of the above, and act accordingly.

JUDGE

JUDGE

Writ Petition Nos. 3075/2012, 3076/2012 and 3078/2012 (connected petitions) are filed by the Executive Director, Chairperson and Managing Director of respondent no.4 – Company respectively, who is petitioner no.1 in Writ Petition No. 2874/2012, which is disposed of in terms of the judgment passed above. None is appearing for the petitioners in these three petitions may be because of subsequent developments that occurred pending petitions.

In view thereof, and for the reasons set out in the judgment passed in Writ Petition No. 2874/2012, and since the petitioners have not prosecuted the petitions, the same are dismissed.

JUDGE

JUDGE

Sumit