IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3540 OF 2021
IN
FIRST APPEAL NO. 748 OF 2003

Garden Silk Mills Limited Garden Mills Compound, Outside Sahara Daraja, Surat.	]]]	**...Appellant.**

Versus

1) Gayatri Industries, a proprietary concern represented by its sole Proprietor namely, Mr. B. S. Sharma Age about : Adult, Business by Occupation, Address at : Plot No. 287 Dena Bank Road, Near Anganwadi Dadra (Dadra and Nagar Haveli).	]]]]]]]	
2) M/s. Petrofiles Co-operative Ltd, P.O. Petrofiles 391, 347, District Vadodara.	]]]	
3) Petrofiles Co-operative Limited P.O. Naldhari, Via Ankleshwar, Dist Bharuch.	]]]	**...Respondents.**

Mr. Shyam Kapadia, Mr. Shayan Dasgupta and Mr. Surya Ravikumar i/b Khaitan & Co., for the Applicant / Appellant.

Mr. Aseem Naphade, Ms. Nishtha Malik, Ms. Sonali Kochar, Ms. Bijal Soni, Mr. Tejas Horambe and Ms. Naqqiya Saifee i/b NAS Legal Advocates for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Reserved on : February 25, 2025.

Pronounced on : March 10, 2025.

Judgment :

1. The First Appeal was preferred by the original Defendant No.1 challenging the judgment and decree dated 20th January 2003 decreeing the suit for sum of Rs.28,97,629/- together with interest @ 24% per annum. First Appeal was permitted to be withdrawn by order of 25th February 2025.

2. The present Interim Application has been preferred by the Appellant seeking a declaration that the impugned judgment and decree dated 20th June 2003 stands extinguished and no proceedings in respect thereof can be continued or initiated and for a direction to release all bank guarantees issued by the Appellant's bank in favour of the Registrar pursuant to order of 17th June 2003. In the alternative, the Appellant seeks release of all original bank guarantees issued by the Bank of Baroda, Bhaga Talav branch in favour of the Registrar of this Court and only retain the bank guarantee dated 17th August 2021 issued by Union Bank of India.

3. The undisputed fact is that pursuant to the filing of First Appeal in May 2003, vide order dated 17th June 2003, this Court granted stay to the impugned judgment and decree on the Appellant's furnishing bank guarantee for sum of Rs.29,00,000/-, to be kept alive during the pendency and disposal of the Appeal. The Appellant is complying with the said order and bank guarantee was regularly renewed and is presently valid till 16th August 2025.

4. During the pendency of Appeal proceedings, on 24th June 2020, the Corporate Insolvency Resolution Process was initiated against the

Appellant under the provisions of Insolvency and Bankruptcy Code, 2016 [for short ***"IBC"***] by National Company Law Tribunal, Ahmadabad [for short **"NCLT"]**. The Resolution Professional was appointed who invited claims as per the prescribed procedure. Vide order dated 1st January 2021, NCLT approved the Resolution Plan of the Appellant under Section 31 of IBC. Admittedly, the Respondent No.1 failed to lodge their claim with the Resolution Professional resulting in the claim not being part of the Resolution Plan. The instant Interim Application seeks release of the bank guarantees with a declaration that the claim stood extinguished due to default on part of Respondent No.1 to lodge their claim with the Resolution Professional and not being part of Resolution Plan.

5. Mr. Kapadia, Learned Counsel appearing for the Appellant would submit that once the Resolution Plan is approved under Section 31(1) of IBC, all claims as provided in resolution plan stand frozen and all claims not forming part of the Resolution Plan stand extinguished. He draws the attention of this Court to the definition of "Creditor" as given in Section 2(10) of IBC and the definition of "claim" under Section 2(6) of IBC and would submit that Respondent No.1's right to payment under the impugned decree constituted a claim and that the Respondent No. 1 was a creditor within the meaning of Section 2(10) of IBC and as the claim was not lodged with the Resolution Professional, the same did not form part of the Resolution Plan and stood extinguished. He draws support from the decision of the Apex Court in ***Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co., Ltd***[1] and the decision in ***Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta***[2]**.**

6. He submits that as far as the bank guarantee which was furnished as condition of stay in this Court is concerned, the bank guarantees form assets of the Corporate Debtor. He submits that Division Bench of this Court in the case of ***Siti Networks Ltd. v. Rajiv Suri***[3] has in identical facts held that assets provided to secure the outcome of challenge to a judgment, remain in the ownership of party that challenged it and the release of such assets would be subject to the outcome of Appeal. He submits that in the present case, as the debt stands extinguished, the Respondent No.1 has no right to assert any claim over the bank guarantees which ought to be released in favour of the Appellant. He would further submit that the defence of Respondent No.1 as regards the monies deposited in Court becoming *custodia legis* based on the judgment of this Court in ***Rajendra Prasad Bansal v. Reliance Communication Ltd***[4]**.** has been considered in the decision of ***Siti Networks Ltd. v. Rajiv Suri*** (supra) holding that

1 (2021) 9 SCC 657.
2 (2019) 16 SCALE 319.
3 2024 SCC OnLine Bom 3550.
4 2023 SCC OnLine Bom 33.

judgment in the case of ***Rajendra Prasad Bansal v. Reliance Communication Ltd*** (supra) apply only to the parties in that case and that the statement of law contained therein has been overtaken by the Supreme Court's order in the matter of ***Siti Networks Ltd. v. Rajiv Suri*** (supra) permitting the withdrawal of bank guarantees. He would further submit that Respondent No.1's reliance on Bombay High Court Letters Patent, 1866 to contend that issue is required to be decided based on equities is entirely misplaced as the First Appeal arises from decree of Court and there is no scope for exercise of equity jurisdiction and in any event such discretion cannot be exercised in contravention of law. He submits that it is the Respondent No.1's own failure to file a claim within time in the IBC proceedings that has led to the debt being extinguished and therefore he cannot now seek to invoke equitable considerations before this Court.

7. *Per contra* Mr. Naphade, Learned Counsel appearing for the Respondent would submit that it was on 23rd June 2000 that the suit came to be filed, decree was passed on 20th January 2003, the Appeal came to be admitted on 17th June 2003 and by order of 17th June 2003 bank guarantees were directed to be furnished as condition of stay. He submits that the money deposited in this Court ceases to remain the asset of the person depositing the same and becomes *custodia legis.* Drawing support from the decision in ***Rajendra Prasad Bansal v.***

Reliance Communication Ltd (supra), he submits that decision in ***Siti Networks Ltd. v. Rajiv Suri*** (supra) does not overrule the proposition of law laid down in ***Rajendra Prasad Bansal v. Reliance Communication Ltd*** (supra).

8. He submits that in ***Rajendra Prasad Bansal v. Reliance Communication Ltd*** (supra) the Division Bench of this Court considered the decision in the case of ***P. S. L. Ramanathan Chettiar v. O. Rm. P. Rm. Ramanathan Chettiar***[5] which has held that once the money has been deposited in Court as a condition for stay of execution of judgment, the real effect is to put the money beyond the reach of parties pending disposal of Appeal. He submits that finding in the case of ***Rajendra Prasad Bansal v. Reliance Communication Ltd*** (supra) is that the money so deposited did not remain the asset of Corporate Debtor and it had held that there is no impediment in the judgment debtor seeking withdrawal of same. He would further submit that in the present case, Respondent No.1 who is decree holder has been deprived of the fruits of his decree since the year 2003 and by reason of the intervening events of the judgment debtor being admitted to corporate insolvency, this is a fit case where the equities should be exercised in favour of the Respondent No.1. He submits that such course is permissible by drawing support from the decision of the Apex

5 AIR 1968 SC 1047.

Court in ***A. P. Showkath Ali v. State of Kerala***[6] and ***M. V. Elisabeth v. Harwan Investment & Trading***[7]***.***

9. I have considered the submissions and perused the record.

10. There is no dispute about the fact that pending the hearing and final disposal of present Appeal, the Corporate Insolvency Resolution Process was initiated against the Appellant in the year 2020 and Resolution Plan was approved under Section 31 of IBC on 1st January 2021. The question to be considered is the effect of approval of Resolution Plan upon the decree in favour of Respondent No.1 in a case where admittedly the Respondent No.1's claim is not part of Resolution Plan due to failure of Respondent No.1 to lodge its claim with the Resolution Professional. For that purpose it would be necessary to have a look at the relevant provisions of IBC.

11. Section 3(6) of IBC defines the expression "Claim" as under :

> "(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"

6 (2018) 11 SCC 688.

7 1993 Supp (2) SCC 433.

12. Section 2(10) of IBC defines the expression "creditor" to mean any person to whom a debt is owed and a financial creditor, an operational creditor, a secured creditor, an unsecured credit and a decree holder. Section 2(11) defines "debt" 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.

13. Conjoint reading of the aforesaid provisions makes it evident that the Respondent being a decree holder fell within the definition of creditor to whom debt is owed.

14. Under Section 13 of IBC, upon admission of the application, the Adjudicating Authority is required to cause a public announcement of the initiation of corporate insolvency resolution process and call for submission of claims under Section 15 of IBC. The public announcement to specify the last date for submission of claims. Section 30 of IBC governs the contents of Resolution Plan and specifies that the Resolution Plan shall provide for payment of debts and Section 31 of IBC provides for approval of the Resolution Plan by the Adjudicating Authority.

15. One of the issues before the Hon'ble Apex Court in the case of ***Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co.,*** (supra) was whether after approval of resolution plan by the Adjudicating Authority, a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the corporate debtor which are not part of resolution plan approved by the Adjudicating Authority. The Hon'ble Apex Court answered the issue in paragraph 102.1 and 102.3 as under:

> "102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.
>
> 102.3. Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

16. The issue is no longer *res integra* and all claims which are not part of the Resolution Plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of any such claim. As admittedly the Respondent's claim was not part of Resolution Plan, the claim stood extinguished upon approval of the Resolution Plan on 1st January, 2021 and an embargo is placed on initiation or continuation of any proceedings for executing the decree.

17. In view of the settled position of law, the Appellants have withdrawn the First Appeal and the Interim Application seeks relief of release of bank guarantees. The bank guarantees were submitted to secure the decree as condition of stay. The issue as to whether the bank guarantees constitute asset of the Corporate Debtor or not is immaterial as the debt itself stands extinguished and once the Respondent's debt stands extinguished, no right can be claimed by the Respondents in the bank guarantee. Permitting the Respondent No.1 to stake a right to the bank guarantees would amount to satisfying the debt of Respondent No.1 which is precisely prohibited, once the claim does not form part of the Resolution Plan.

18. The matter ought to have rested here. However, Mr. Naphade has relied upon the decision in the case of ***Rajendra Prasad Bansal v. Reliance Communication Ltd*** (supra) to contend that bank guarantee deposited in this Court is not an asset of Corporate Debtor. In fact, the said position could have been considered at the stage where the Corporate Resolution Process is underway and the Resolution Plan has not yet been approved. In the case of ***Rajendra Prasad Bansal v. Reliance Communication Ltd*** (supra), the judgment debtor was undergoing Corporate Insolvency Resolution Process and the issue was whether the Respondent–decree holder can be allowed to withdraw the monies deposited by Appellant towards the stay of execution of impugned judgment given that the Appellant is undergoing CRP. It is in that context, the Division Bench of this Court considered various decisions on the subject which held that the real effect of depositing money in the Court was to put the money beyond the reach of parties pending the disposal of Appeal and when money is so deposited in Court, it is *custodia legis* and is no longer under the control of either the judgment debtor or decree holder. The money so deposited and which is in the custody and control of Court has been held to automatically become the property of decree holder and he has vested right to withdraw the same amount. The decision has been rendered in completely different factual scenario and is clearly distinguishable. In the present case, the fate of the money deposited in this Court is no longer subject to the decision in Appeal as the fate has been sealed by the approval of Resolution Plan on 1st January 2021 which does not include the claim of Respondent No. 1.

19. Similarly, in the case of ***Siti Networks Ltd. v. Rajiv Suri*** (supra) the dispute arose in respect of the bank guarantee which was deposited in the Court and was sought to be withdrawn by the Resolution Professional during the Corporate Insolvency Resolution Process. The Division Bench of this Court was considering the grant of permission to the Appellant for withdrawal of the amount deposited in this Court. In addition, there was bank guarantee furnished as condition for stay. After Corporate Insolvency Resolution Process was initiated and moratorium was imposed under Section 14 of IBC, the Hon'ble Apex Court revoked the bank guarantees and for withdrawal of cash deposit, the Appellant approached the High Court. The Division Bench clarified that the decision in the case of ***Rajendra Prasad Bansal v. Reliance Communication Ltd*** (supra) applies only to the parties in that case, although the statement of law as contained therein, has been overtaken in view of the Supreme Court order.

20. Even in case of ***Siti Networks Ltd. v. Rajiv Suri*** (supra), the position was the same as in the case of ***Rajendra Prasad Bansal v. Reliance Communication Ltd*** (supra), i.e. the Corporate Insolvency Resolution Process being underway. It is not necessary to consider either of the decisions in facts of present case. The decisions relied upon by Mr. Naphade to press for exercise of equity jurisdiction does not assist the case of Respondent in view of clear enunciation of law and the statutory provisions. The scope for exercising equity jurisdiction occurs when there is no law operating in the field as held by the Apex Court in the case of ***S.S. Bola vs B.D.Sardana***[8]

21. Resultantly, the inevitable conclusion is that as the Respondent No.1's claim did not form part of the Resolution Plan due to failure of the Respondent No.1 to lodge its claim with the Resolution Professional, upon approval of the Resolution Plan by NCLT vide order

8 (1997) 8 SCC 522.

dated 1st January, 2021, the debt stood extinguished. Upon extinguishment of debt, no right vests in the Respondent No.1 in respect of the bank guarantees or to oppose the release of bank guarantees. Consequently, the Interim Application stands allowed in terms of prayer clauses (a) and (b) as under:

> "(a) That this Hon'ble Court be pleased to direct that the Order and Decree dated 20th January, 2023 stands extinguished and no proceeding in respect thereto can be continued and / or initiated.
>
> (b) That this Hon'ble Court be pleased to release all Bank Guarantees issued by the Appellants' Banks in favour of Registrar pursuant to the order dated 17th June, 2003."

[Sharmila U. Deshmukh, J.]