

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Comp. App. (AT) (Ins) No. 1808 of 2024 & I.A. No. 6593 of 2024

IN THE MATTER OF:

Pooja Ramesh Singh

...Appellant

Versus

Jammu and Kashmir Bank Ltd. & Anr.

...Respondents

Present:

For Appellant : **Mr. Gautam Narayan, Mr. Vishesh Kalra, Ms. Smriti Churiwal & Mr. Jaiveer Kant, Advocates.**

For Respondents : **Mr. Sumesh Dhawan, Mr. Jaskaran S. Bhatia, Mr. Shaurya Shyam, for R-1.**

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is filed by the suspended director of the Corporate Debtor, namely, Essel Infraprojects Ltd. (for short 'EIL') against the order dated 28.08.2024 passed in RCP No. 06/IB/MB-V/2023 connected with CP No. 361/IB/2022 by which an application filed by the Financial Creditor, namely, Jammu and Kashmir Bank Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'Code') against the CD/(EIL) for the resolution of a debt of Rs. 87,43,17,925.37/- inclusive of contractual interest, penal interest, costs and expenses, has been admitted and Hemant J Mehta was appointed as the Interim Resolution Professional (for short 'IRP').

2. The present appeal came up for preliminary hearing on 13.09.2024. This court while issuing notice in this appeal also directed that "In the

meantime, no further steps shall be taken in pursuance of the Impugned Order dated 28.08.2024.”.

3. Brief facts of this case are that the Financial Creditor sanctioned a long term working facility of Rs. 200 Cr. to Pan India Utilities Distribution Company Ltd. (PIUDCL) on 17.12.2013. The loan to PIUDCL was secured by a corporate guarantee given by the CD with mortgage over land measuring 196.16 acres, located in Gorai Village, Borivali (West), Mumbai, owned by the CD. The loan agreement was executed on 27.12.2013 after formalizing the security arrangements. The CD executed deed of mortgage in favour of the Financial Creditor. The loan was renewed on 18.11.2017 through a renewal cum reduction letter.

4. The Borrower, namely, PIUDCL defaulted in repayment of instalments agreed to by it by the loan agreement dated 27.12.2013/ sanction letter dated 17.12.2013.

5. The Financial Creditor claimed the default by the CD of debt of Rs. 69,97,71,800.00/- as on 01.03.2019 with interest Rs. 17,36,47,021.00/- calculated @ 2.55% p.a with monthly rest plus 2% penal interest (effective 12.20% p.a.) as on 30.06.2020 with legal expenses and other charges of Rs. 9,99,104,005.

6. The Financial Creditor sent a demand notice to PIUDCL dated 31.01.2019 and 02.03.2019 intimating that the credit facility granted to the CD has been matured on 28.12.2018 and principal amount of Rs. 70 Cr. is outstanding which is required to be repaid.

7. In reply to the said notice dated 31.01.2019, PIUDCL, vide its reply dated 05.03.2019, admitted the debt and default and requested for further time to repay the same raising the issue of liquidity.

8. The Financial Creditor issued a letter on 29.10.2019 to the Corporate guarantor /CD qua repayment of outstanding loan as per his obligation but no reply was received.

9. The Company Petition No. 543 of 2021 came to be filed by State Bank of India against the CD who had issued corporate guarantee which was admitted into CIRP on 01.03.2023. Subsequently, the present FC filed CP (IB) No. 361/MB/2019 against the same CD but this petition was dismissed on 01.03.2023 because the CD was already facing CIRP in CP (IB) No. 543 of 2021. However, the order of admission passed in CP (IB) No. 543 of 2021 was set aside in appeal, therefore, an application for restoration was filed for restoring CP (IB) No. 361/MB/2019 which was allowed on 02.11.2023, therefore, the present petition has been numbered as RCP No. 06/IB/MB-V/2023 connected with CP No. 361/IB/2019.

10. The CD did not dispute the existence of debt and default but it claimed that its liabilities have been transferred to another company due to a scheme of demerger and a subsequent scheme of amalgamation. The CD entered into a scheme of demerger where a specific asset (Gorai Land) and its related project were transferred to Essel Urban Infraprojects Ltd. (for short 'EUIL') and the remaining assets and business of the CD remained with it. The demerger was approved by the Bombay High Court on 04.04.2014. EUIL merged with Pan India Infraprojects Pvt. Ltd. (for Short 'PIIPL') by scheme of amalgamation because of which all assets and liabilities of the EUIL

including Gorai land were transferred to PIPL. This merger was approved by the Bombay High Court on 20.06.2014.

11. It is the case of the CD that all its liabilities including the liability under a corporate guarantee were transferred to EUIL and then to PIPL, therefore, it has no longer having any liability for the debt. It was also the case of the CD that renewed sanctioned letter dated 18.11.2017 has not mentioned the guarantee, therefore, it should be considered as relinquished or extinguished.

12. The Tribunal did not accept the contention of the CD and while referring to the decisions of the Hon'ble Apex Court in the case of State Bank of India Vs. M/s Shree Ram Urban Infrastructure Ltd., 2020 SCC OnLine SC 341, Everest Kento Cylinders Ltd. Vs. Union of India (2015) 2 SCC 1, ICICI Bank Ltd. Vs. Urban Infrastructure Real Estate Ltd., (2019) 16 SCC 528, V.S Dempo & Co. Ltd. Vs. Reliance Communications Ltd., (2021) 10 SCC 176, Canara Bank Vs. N.G. Subbaraya Setty & Anr., (2018) 16 SCC 228 and Sarbjit Singh Vs. Union Bank of India, (2022) 7 SCC 464 held that the guarantee given by the CD shall still exist and will not be effected where the two orders referred to herein above passed by the Bombay High Court and admitted the petition because debt and default was not denied.

13. Aggrieved against the order impugned herein, the present appeal has been preferred under Section 61 of the Code.

14. Counsel for the Appellant has not disputed the facts narrated herein before about the loan advanced by the Financial Creditor to the principal borrower and the guarantee given by the CD besides executing a mortgage deed of the immovable property. There is no dispute that there was renewed

sanctioned letter dated 18.11.2017 and that an order of scheme of demerger entered into by the CD by which it transferred mortgaged land and its related project to EUIL and the said scheme was approved by the Hon'ble Bombay High Court on 04.04.2014 and that EUIL was merged with PIPL through scheme of amalgamation approved by the Bombay High court on 20.06.2014. All that has been argued before this Court is that the scheme before the said orders passed by the Hon'ble Bombay High court are binding on all creditors including the financial creditor/Respondent No. 1. However, there is a provision in the guarantee deed in the nature of clause 8 which says that "this guarantee shall not be determined and not in any way prejudiced by any absorption or by any amalgamation of the guarantor company with any other company, shall incur and be available to the Bank till such time the loan accounts of the borrower company is adjusted in the books of accounts of the bank." In this regard, Counsel for the Appellant has submitted that once the liability of the CD was transferred, it cannot be pushed into CIRP on account of debt and default. It is also submitted that schemes approved by the Hon'ble Bombay High Court on 04.04.2014 and 20.06.2014 were not challenged and had attained finality. Counsel for the Appellant has further submitted that clause of the renewed sanctioned letter dated 18.11.2017 provides that all other existing terms and conditions remain applicable, would mean that other than the conditions modified by the 2017 sanction letter, the subsisting conditions of the 2013 sanction letter would remain the same. It is further submitted that 2013 sanction letter was replaced by the 2017 sanction letter which is different from the earlier one. 2013 sanction letter was for 200 Cr. whereas 2017 sanction letter

was reduced to Rs. 130 Cr.. In the 2013 sanction letter, the mortgagor and guarantor was CD/EIL whereas in 2017 sanction letter the mortgagor and guarantor was PIPL. It is submitted that on the date of filing of Section 7 petition, the operative sanction letter was the 2017 whereas debt has been claimed on the basis of the sanction letter 2013.

15. On the other hand, Counsel for the Financial Creditor, while vehemently opposing the present appeal, has submitted that the loan sanctioned in 2013 of an amount of Rs. 200 Cr. was secured by mortgage of land measuring 196.16 acres and a corporate guarantee issued by the CD in its favour. It is further submitted that the order of Hon'ble Bombay High Court dated 04.04.2014 approving the scheme of demerger of EIL was in respect project land (demerged undertaking) which was transferred to another group entity, namely, EUIPL. It is submitted that the scheme of demerger clearly states that all assets and liabilities pertaining to the demerged undertaking stands transferred as per the scheme means the development, operation and maintenance of a facility centre to be established in the Gorai Region being the development and maintenance of the land mortgaged by the CD to the FC. It is submitted that it was only an asset which was demerged from the CD whereas clause 8 clearly provided that it shall not be affected by any amalgamation or absorption of the guarantor company. It is also submitted that in revised sanction which was pertaining to Rs. 130 Cr. it was clearly stipulated that all other existing terms and conditions shall remain applicable which include clause 8 of the earlier guarantee deed. Counsel for the Respondent has also submitted that PIUDCL vide its letter dated 12.12.2017 addressed to FC unequivocally

acknowledged the continued subsistence of the Corporate guarantee issued by CD despite intervening scheme of demerger/merger and requested for the release of guarantee given by the CD. It is also submitted that corporate guarantee executed by the CD never stood transferred/discharged under the scheme of demerger and merger because in its letter dated 12.12.2017, three years after the merger, request was made to the Respondent No. 1 to release the guarantee given by the CD. It is further argued that the CD has failed to bring on record a single letter from the Bank by which it had discharged the guarantee given by the CD which cannot be accepted on inference and the corporate guarantee cannot be unilaterally revoked or assigned to another entity without the express consent of the FC. In the end, it is submitted that corporate guarantee is an independent contract and remains valid despite the restructuring and it cannot be linked to the Gorai project.

16. We have heard Counsel for the parties and perused the record with their able assistance.

17. We need not reproduce the facts again as to how the relationship of the FC and the CD came into being but suffice it to say that for the purpose of securing the loan advanced to the principal borrower, CD/EIL had executed the guarantee deed as well as the mortgage deed. There were internal adjustment by the Essl group by way of demerger/merger/amalgamation but it has no effect in so far as the liability of the CD as the corporate guarantor is concerned because it has been categorically mentioned in clause 8 of the guarantee deed which has already been noticed in the early part of this order.

18. There is no substance in the argument of the Appellant about the discharge of its liability after execution of the revised sanction on 18.11.2017 because it has specifically been mentioned that all other existing terms and conditions remain applicable which include clause 8 of the guarantee deed.

19. Moreover, there is no evidence brought on record by the CD that at any point of time the liability of the CD as a corporate guarantor was discharged by the FC rather by letter dated 12.12.2017 which was written by the principal borrower to the FC, requests has been made to release the guarantee of the CD which means that post renewal of sanction letter dated 18.11.2017 the guarantee was continuing and there is no evidence brought on record by the CD that the guarantee given by the CD was ever discharged by the FC.

20. Thus, in view of the aforesaid facts and circumstances, we do not find error in the impugned order which calls for any interference in this appeal, therefore, the same is hereby dismissed though without any order as to costs. I.As, if any, pending is/are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

New Delhi
11th September, 2025.
Sheetal