

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF FEBRUARY, 2026



PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 372 OF 2024

BETWEEN:

1. STATE BANK OF INDIA
HAVING ITS OFFICE AT:
STRESSED ASSETS
MANAGEMENT BRANCH
STATE BANK OF INDIA
2ND FLOOR, OFFICE COMPLEX BUILDING
LHO CAMPUS, #65, ST. MARK'S ROAD
BENGALURU - 560 001
REP. BY ITS AUTHORISED SIGNATORY
MR. SAMJI SUDARSHAN

...APPELLANT

(BY SRI LOMESH KIRAN N., ADVOCATE)

AND:

1. M/S. PATEL ENGINEERING LIMITED
HAVING ITS REGISTERED OFFICE AT:
PATEL ESTATE ROAD
JOGESHWARI (W)
MUMBAI - 400 102
REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. BABA SAHEB GHORPADE

...RESPONDENT

(BY SRI K.G. RAGHAVAN, SENIOR ADVOCATE FOR
SRI MANU PRABHAKAR KULKARNI, ADVOCATE)



THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 (1A) OF THE COMMERCIAL COURTS ACT, 2015, PRAYING TO CALL FOR RECORDS FROM THE FILE OF THE LXXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU., IN COM. OS NO.1159/2023. (b) PASS AN ORDER TOWARDS SETTING ASIDE THE IMPUGNED ORDER DATED 25.07.2024 PASSED BY THE HON'BLE LXXXV CITY CIVIL AND SESSIONS JUDGE, BENGALURU (COMMERCIAL COURT -CCH-86), ON IA NO.2 UNDER ORDER 39 RULES 1 AND 2 R/W SEC.151 OF CPC., 1908, IN COM. OS NO.1159 OF 2023 & ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

INTRODUCTION

1. State Bank of India [**SBI**], had filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 [**CC Act**] impugning an order dated 25.07.2024 [**impugned order**] passed by the learned LXXXV Additional City Civil and Sessions Judge,

Bengaluru [Commercial Court] in I.A. No.2 in Com.O.S.No.1159/2023.

2. The respondent, Patel Engineering Limited [PEL], has instituted the said suit, *inter alia*, seeking a decree declaring that no liability accrued under the guarantee executed by it. PEL had filed the above-mentioned application (I.A. No.2) under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 [CPC], *inter alia*, seeking a temporary injunction restraining SBI, its officers, agents, representatives, assigns, sub-ordinates, and superiors from taking further proceedings or any steps or actions in respect to the PEL's guarantee dated 06.07.2018. PEL also sought directions to be issued to the SBI for removal of its name from Credit Information Bureau of India Limited [CIBIL] list as a defaulter of its corporate guarantee till disposal of the suit.

3. The learned commercial court has, in terms of the impugned order, restrained SBI from proceeding in respect of PEL's corporate guarantee till the disposal of the suit.

4. In the meantime, SBI had filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 [IBC] before the National Company Law Tribunal [NCLT]. It had, prior to the initiation

of the suit, also issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [**SARFAESI Act**] demanding the amounts claimed from PEL as a guarantor. In view of the impugned order, SBI is precluded from pursuing its petition before the NCLT or under the Recovery of Debts and Bankruptcy Act, 1993 [**RDB Act**] for recovery of the amounts claimed by it.

PREFATORY FACTS

5. SBI had, in terms of the letter of arrangement dated 06.07.2018, sanctioned a term loan of ₹49,00,00,000/- (Rupees Forty Nine Crores only) under Builder Finance for Residential Housing Projects Scheme to GM Infinite Dwelling (India) Private Limited [hereafter referred to as '**the Principal Borrower**' or '**the Developer**'] which is a company involved in the business of development of real estate. The said loan was sanctioned to enable the Developer to fund the development of a real estate project named 'Townsville'. The letter of arrangement dated 06.07.2018 was accompanied by the terms and conditions on which the loan was sanctioned. The said letter was accepted by the Developer and the guarantors – two individuals, Mr Gulam Mustafa and Mr Jawid

Hussain; a company named Gulam Mustafa Enterprises Private Limited; and PEL.

6. The terms and conditions also refer to the guarantees required to be provided. The relevant portion of the tabular statement setting out the terms and conditions regarding the guarantees is reproduced below:

Personal guarantees:

1. Mr. GULAM MUSTAFA, Director of M/s GM Infinite (India) Private Limited [Net Means of Rs.334.60 crore]
2. Mr. JAWID HUSSAIN, Director of M/s GM Infinite (India) Private Limited [Net Means of Rs. 6.90 crore]

Corporate Guarantee:

3. **M/S Gulam Mustafa Enterprises Private Ltd.**
4. **M/S Patel Engineering Limited for the value not below the value of their share of land mortgaged.**

7. The loan was also required to be secured by a mortgage of (immovable properties): Schedule A comprising of land to the extent of 4 acres and 38 guntas comprising Survey No.352 (Old Survey No. 155/11) at Hulimangala Village, Jigani Hobli, Anekal Taluk, Bengaluru; and Schedule B — 61 residential villament units falling in the share of the Developer as specified in the schedule are annexed to the said letter.

8. The guarantors, including PEL, also executed the 'Guarantee Agreement' dated 06.07.2018 [**the guarantee deed**]. It is relevant to state that the guarantee deed reflected the names of the guarantors as under:

3	Name/s of the Guarantor(s) <i>[Full name in block letters]</i> <i>(Father's/Husband's name to be mentioned)</i>	1. Mr. Gulam Mustafa, S/o Mr. Gulam Rasul 2. Mr. Jawid Hussain S/o Mr. Gulam Rasul 3. M/S Gulam Mustafa Enterprises Private Ltd. 4. M/s Patel Engineering Limited (For the value not below the value of their share of land mortgaged)
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9. It is relevant to note that although in the letter of arrangement, the name of the PEL as a guarantor contained the qualification of the value (not below the value of the share of land mortgaged), the body of the guarantee deed did not contain any such qualification.

The relevant clauses of the Guarantee Deed are set out below:

"WHEREAS the Bank, at the request of the Guarantors, agreeing or continuing to finance the business by granting or continuing or granted all or some or any of the said facilities under the above Agreement of Loan-cum-Hypothecation as modified, if any, by Supplemental Agreement(s) of Loan-cum-Hypothecation to the Borrower(s) or otherwise giving financial accommodation or granting enhanced limits in the said facilities as the Bank may in its absolute discretion think fit or granting extension of time for repayment or agreeing to defer or agreeing not to sue the Borrower(s) in respect of all or some or any of the said facilities, the Guarantors have agreed to guarantee the due payment by the Borrower(s) of all the amounts due by and payable by the Borrower(s) from time to time or at any time under or in respect of the said facilities together with interest, costs, charges,

expenses, and / or other monies due to the Bank under the said facilities or any of them on demand by the Bank, being these presents which the Guarantor(s) have agreed to do on the terms hereinafter appearing.

NOW IN CONSIDERATION OF THESE PREMISES and it is hereby agreed by the Guarantors with the Bank (the Guarantors covenanting and agreeing jointly and severally) as follows:

1. If at anytime default shall be made by the Borrower(s) in payment of the principal sum and/or other monies for the time being due to the Bank in respect of or under the said facilities, the Guarantors shall forthwith pay unconditionally to the Bank merely on demand by the Bank, the whole of such principal sum together with interest costs, charges, expenses, fees, commission and or any other monies as may be then due to the Bank without any demur or protest or contestation and without reference to the Borrower(s), irrespective of any dispute or difference with the Borrower(s) in any proceedings and shall indemnify and keep indemnified the Bank against all losses of the said principal sum, Interest or other monies due and all costs, charges and expenses whatsoever which the Bank may incur by reason of any default on the part of the Borrower(s).

6. The Guarantee is a continuing one amounts advance to the Borrower(s) under the said facilities as also for all interest, costs, charges, expenses and/or other monies which may from time to time become due and remain unpaid to the Bank thereunder and shall not be determined or be affected by any account/s becoming nil or coming into credit or being closed at any time or by any rephasing of repayment schedules of all or any of the said facilities/limits and/or fresh account/s being opened in respect of fresh/revised facilities granted/being granted to the borrower(s).

7. The Guarantors shall forthwith on demand made by the Bank deposit such sum or security as the Bank may specify for the due fulfillment of their obligations hereunder and the Bank shall have the liberty to sell any security so deposited with the Bank in or towards the satisfaction or non-fulfillment of the said obligations by the Guarantors.

10. That if the Borrower(s) being an individual becomes an insolvent or being a company enters into liquidation or winding up or if the management of the undertaking of the Borrower(s) is taken over or nationalized under any law or makes any arrangement or composition with creditors, the Bank may (notwithstanding payment to the Bank by the Guarantors or any other person of the whole or any part of the amount hereby secured) rank as creditor and prove against the estate of the Borrower(s) for the full amount of all the Bank's claims against the Borrower(s) or agree to and accept any composition in respect thereof and the Bank may receive and retain the whole of the dividends, composition or other payments thereon to the exclusion of all the rights of the Guarantors in completion with the Bank, until all the Bank's claims are fully satisfied and the Guarantors will not be paying off the amounts payable by them or any part thereof or otherwise prove or claim against the estate of the Borrower(s) until the whole of the Bank's claims against the estate of the Borrower have been satisfied and the Bank may enforce and recover payment from the Guarantors of the full amount payable by the Guarantors, notwithstanding any such proof or composition as aforesaid. On the happening of any of the aforesaid events, the Guarantors shall forthwith inform the Bank in writing of the same.

12. This Guarantee is independent and distinct from any security that the Bank has taken or may take in any manner whatsoever and the liability of the Guarantors shall be in addition to such security and the loss, impairment, failure, realization or release of or parting with any such security shall not diminish, extinguish or affect the liability of the Guarantors hereunder and the Bank shall have fullest liberty to call upon the Guarantors to pay the principal sum together with interest, cost, charges, expenses and all other monies payable under all or any of the said facilities without requiring the Bank to realize from the Borrower(s) the amounts due to the Bank and/or enforcing any remedies or securities available to the Bank."

10. PEL states that it was the owner of the subject land (Schedule A properties) measuring 4 acres and 38 guntas, comprising Survey

No. 352 (old Survey No. 155/11), located at Hulimangala Village, Jigani Hobli, Anekal Taluk, Bengaluru Urban District. In the year 2011, the Karnataka Industrial Areas Development Board [**KIADB**] had sanctioned a project comprising 124 residential units with structures, open spaces, common entrances, passages, etc., by the name 'Townsville'. PEL states that as of 21.11.2017 – the date when it entered into a Joint Development Agreement [**JDA**] with the Developer to complete the project – the rights in respect of 63 of the 124 residential units [the **sold units**] had already been sold by PEL to various customers. The Developer was required to complete the project at its costs and recover the same from the sale of the 61 units that remained unsold [the **unsold units**]. The unsold units were, in effect, the Developers' share of the project.

11. Under the JDA, the borrower was authorised to obtain financing from banks and financial institutions against the security of the unsold units.

12. PEL also passed a resolution to mortgage the subject land to SBI by depositing the title deeds, enabling the Developer to avail of financial assistance for the completion of the project.

13. As noted above, SBI lent a sum of ₹49,00,00,000/- (Rupees Forty Nine Crores only) to the Developer (the Principal Borrower).

14. The Principal Borrower defaulted in repayment of the loan availed from the SBI. On 29.11.2022, SBI issued a notice calling upon the borrower to pay an overdue amount of ₹9.16 crores' for regularising the same. Admittedly, the Principal Borrower did not repay the amount due, and SBI classified the loan account as a Non-Performing Asset [**NPA**] on 04.12.2022.

15. On 05.12.2022, the SBI issued a demand notice under Section 13(2) of the SARFAESI Act, claiming an amount of ₹54,64,50,739/-. It called upon PEL, as a guarantor, to pay the said amount, which, according to the SBI, was due as on 04.12.2022.

16. In response to the letter dated 05.12.2022, the PEL denied its liability and claimed that the SBI was entitled to the Principal Borrower's share of 61 villaments units, but that would be available only after completion of the project. PEL claims that the Principal Borrower had abandoned the project. PEL stated that 63 residential units had already been sold to third-party purchasers, along with the undivided right, title, and interest in the schedule 'A' property, and that their rights could not be defeated. PEL also contested the

notice as vague and failing to clearly explain how the dues were calculated. It is also material to note that the PEL claimed that its liability under the corporate guarantee would, at most, be limited to the value of its share of the mortgaged land.

17. SBI responded to the PEL's response dated 02.02.2023 by a letter dated 14.02.2023 asserting that the PEL was liable to pay the entire extent of the loan amount of ₹49,00,00,000/-. Thereafter, on 07.08.2023, the SBI issued a notice of possession to the Principal Borrower informing that it had taken possession of the mortgaged properties. The Principal Borrower filed a writ petition, W.P.No.5/2023, which was disposed of by this Court by an order dated 01.09.2023, relegating the Principal Borrower to avail its remedies before the Debts Recovery Tribunal.

18. Thereafter, on 16.09.2023, the SBI filed an application (CP (IB) No.4/2024) under Section 7 of IBC against the Principal Borrower. Subsequently, on 20.09.2023, the SBI initiated proceedings under Section 7 of the IBC before the NCLT against PEL.

19. Thereafter, on 11.10.2023, PEL filed a Commercial Suit, Com.O.S.No.1159/2023. PEL also sought an *ex parte ad* interim order in the said proceedings, which was not acceded to.

20. Thereafter, PEL filed a writ petition, W.P.No.24556/2023, impugning the SBI's demand notice. The learned Single Judge of this Court passed an interim order dated 29.11.2023 in the said writ petition, restraining SBI from taking any precipitative steps against the PEL for a period of four weeks.

21. Meanwhile, the borrower also filed an appeal, W.A. No. 1214/2023, against the order dated 01.09.2023 passed in W.P.No.5/2023. The appeal was dismissed by an order dated 23.11.2023.

22. SBI states that in view of the interim order dated 29.11.2023 passed by this Court in W.P.No.24556/2023, the learned NCLT stayed the proceedings in CP (IB) No.1092/2023 by its order dated 08.12.2023. Subsequently, by an order dated 17.01.2024, this Court vacated the interim order granted in W.P.No.24556/2023.

23. The learned Commercial Court passed an interim order dated 09.07.2024, restraining the parties from precipitating the matter till

the disposal of PEL's interim application. In view of the said order, the NCLT adjourned the proceedings in CPIB No.1092/2023, by an order dated 11.07.2024. Thereafter, the Commercial Court passed the impugned order.

24. On 12.02.2024, SBI filed an application under Order VII Rule 11 of the CPC, praying that the plaint be rejected for want of jurisdiction. However, the learned Commercial Court did not accept the application and dismissed it by an order dated 01.03.2025.

25. SBI has impugned the said order in WP No.38417/2025, which is pending.

THE PLAINT

26. Before proceeding, it is relevant to examine PEL's plaint filed before the Commercial Court. PEL states that, under clause 15 of the JDA, the Principal Borrower was not entitled to raise any loan against the security of the sold units. It also referred to the addendum to the JDA dated 22.06.2018, which entitled the Principal Borrower to obtain financial facilities against the mortgage of its share of unsold units.

27. PEL claims that the documents were examined by the SBI and that the SBI was therefore fully aware that 63 units had been sold. Therefore, the sold units with the commensurate area of land could not be mortgaged. It claimed that, in line with the said understanding, a memorandum of deposit of title deeds in respect to Schedule 'A' property (Schedule 'A' property) was executed.

28. PEL acknowledged that it was aware that SBI disbursed loans amounting to ₹49,00,00,000/- to the Principal Borrower on various dates between 11.07.2018 and 12.02.2020. The tenure of the loan was 48 months including a moratorium period of twenty-four (24) months. However, due to COVID-19, the Principal Borrower requested an extension of the moratorium and repayment periods.

29. PEL also accepted that it had executed the guarantee deed as claimed and that the same was necessitated and intended only to ensure that PEL did not create any hindrance if SBI intended to enforce the mortgage. PEL claimed that its liability was limited to the value of its share of the land mortgaged to the SBI. PEL claimed that since only the Principal Borrower's share (the unsold units) was mortgaged to SBI, PEL's share in the mortgaged property was nil.

Consequently, PEL's liability as a guarantor under the guarantee deed was also nil.

30. On the basis of the pleadings as briefly noted hereinbefore, PEL sought the following reliefs:

- "a. Declare that no liability accrues to the plaintiff under the Guarantee dated 06.07.2018;
- b. In the alternative to (a) above, this Hon'ble Court may be pleased to determine the liability if any of the plaintiff under Guarantee dated 06.07.2018;
- c. Cost of the suit to the plaintiff;
- d. Pass such other and further orders as the nature and circumstances of the case may require."

31. It is clear from the above that PEL essentially seeks a declaration that it is not liable to pay any amount to SBI against the guarantee deed dated 06.07.2018 executed by it.

THE IMPUGNED ORDER

32. It is SBI's case that the PEL has guaranteed the Principal Borrower's repayment obligations, and that its liability is co-terminus with that of the Principal Borrower. SBI states that it has initiated proceedings against the Principal Borrower and the guarantors and has commenced the process to enforce its security interest under the SARFAESI Act.

33. SBI disputes PEL's interpretation of the guarantee deed. It states that the terms of the guarantee are clear and that the Principal Borrower and the guarantors, including PEL, are jointly and severally liable for the amounts owed by the Principal Borrower.

34. As is apparent from the above, the principal dispute revolves around the interpretation of the terms of the guarantee deed dated 06.07.2018, which was admittedly executed by PEL. Whilst PEL claims that its liability under the agreement of mortgage is nil; SBI claims that its liability is to the full extent of the amounts payable by the borrower.

35. The learned Commercial Court examined the plaint and also considered SBI's defence as set out in the written statement. The court noted that the bone of contention between the parties was the extent of PEL's liability under the guarantee deed. After considering the said contentions, the learned Commercial Court observed as under:

‘22. Upon considering the above contentions the pleadings and documents placed on record it is clear that the entire extent of 4 acres 38 guntas owned by the plaintiff has been mortgaged for the loan sanctioned to GM Infinite. Under the terms of JDA the borrower GM Infinite was not permitted to raise any loan on the 63 sold units. As per the terms of sanction letter the liability of plaintiff is restricted to the value of plaintiff's share in the land mortgaged. The letter of the bank dated 21.06.2018

stipulates that the land on which 63 sold units are situated is not available for the mortgage. Even in the letter dated 14.02.2023 also there is mention of the same. Had the liability of the plaintiff being not restricted, there was no occasion for the defendant bank to mention the same in its letter to the plaintiff. Upon considering the rival contention the document filed on record and narrated as above and and on following observation in the judicial pronouncement referred supra, it can be held without hesitation the plaintiff cannot be proceed against without its liability being determined. It is restricted to the value not below the value of share in the land mortgaged. Hence, it can be held without hesitation that plaintiff has made out prima-facie case for grant of temporary injunction and the balance of convenience lies in its favour. Also it would be the plaintiff who would suffer irreparable loss or injury if temporary injunction is not granted. In so far direction to the defendant bank to withdraw/remove the name of the plaintiff from CIBIL as defaulter of corporate guarantee the same can be considered at the time of final disposal of the suit.”

36. According to the learned commercial court, it was essential to determine liability under the guarantee deed before SBI could be permitted to pursue the proceedings initiated on the strength of that deed. In view of the said findings, the learned commercial court passed the impugned order restraining SBI from taking any further steps/proceedings pursuant to the deed of guarantee dated 06.07.2018.

SUBMISSIONS

37. Mr K.G. Raghavan, the learned Senior Counsel appearing for the PEL, opposed the present appeal on several grounds.

38. First, he argued that the contention that the suit was barred under Section 34 of the SARFAESI Act, Section 18 of the RDB Act, and Section 63 of the IBC was not pleaded by SBI. He contended that this was neither articulated in SBI's written statement nor in the grounds of challenge in the present appeal. He argued that, in the absence of any pleadings, it was not permissible for SBI to raise these grounds to challenge the impugned order. He accepted that the question of whether the Commercial Court's jurisdiction was barred by the relevant statutes was a question of law. However, contended that a question of law could not be raised unless it was pleaded. He referred to the decision of the Supreme Court in **Sulthan Said Ibrahim v. Prakasan and others**¹ in support of his contention.

39. Second, he submitted that SBI had filed an application (I.A.No.6 in COM.OS.No.1159/2023) under Order VII Rule 11 of the CPC based on the said assertion, which was rejected by the learned commercial court. He submitted that since SBI had filed a writ petition challenging the learned Commercial Court's order rejecting its application under Order VII Rule 11 of the CPC on the ground

¹ 2025 SCC online SC 1218

that the Suit was not maintainable, it was estopped from agitating the said issue in the present appeal. He contended that raising the question of jurisdiction in the present appeal is an abuse of the process of the Court.

40. Third, he earnestly contended that PEL's guarantee could not be invoked as its liability under the guarantee deed was yet to be determined. He submitted that without prior determination of the value of the guarantee, it could not be invoked. He referred to the decision of **Punjab National Bank v. Vikram Cotton Mills**² in support of the said contention.

41. Fourth, he contended that the DRT lacked jurisdiction to adjudicate the issues raised. He submitted that although SBI issued a notice under Section 13(2) of the SARFAESI Act, it had neither initiated any proceedings under the SARFAESI Act nor under the RDB Act till the date of filing of the suit.

42. Fifth, he contended that since SBI had not instituted any proceedings before the DRT, the PEL was not entitled to approach the DRT. He referred to Section 17 of the RDB Act and submitted that Section 18 of the RDB Act bars the jurisdiction of Civil Courts in

² (1970) 1 SCC 60

respect of the matters specified under Section 17. And, since Section 17 confers jurisdiction on the DRT to entertain applications from banks and financial institutions for recovery of debts, recourse to the DRT was not available to PEL.

43. Sixth, he submitted that DRT cannot grant any declaratory relief; it can only issue recovery certificates. He also submitted that adjudication of the questions raised necessarily requires evidence regarding the determination of PEL's share of mortgage land and its valuation, and this would require extensive cross-examination, which, according to him, DRT was not empowered to conduct. He contended that the issues raised in the suit could not be adjudicated by the NCLT. The NCLT could not grant any declaratory relief as it exercises only summary jurisdiction.

44. In his written submissions, he stated that although SBI had filed an application (OA No.1373/2024) before the learned DRT-II, Bengaluru, the summons in the said application was issued on 16.10.2024, which was more than a year after the filing of the suit. He also referred to the decisions of the Supreme Court in **Dwarka Prasad Agarwal v. Ramesh Chander Agarwal**³ and **Central Bank**

³ (2003) 6 SCC 220

of India v. Prabha Jain⁴ in support of the contention that a bar on the jurisdiction of the Civil Court could not be readily inferred.

REASONS AND CONCLUSION

45. As is apparent from the above, the principal dispute raised by the PEL concerns its liability under the guarantee deed. According to PEL, the notation against its name – *“for the value not below the value of their share of land mortgaged”* – limits its liability under the guarantee deed to Nil. As noted earlier, this is the case set out in the plaint. However, we may also observe that before the learned Commercial Court, the counsel representing PEL argued that PEL was not avoiding its liability as a guarantor. Instead, it was merely attempting to determine the value of its share. The said argument, as recorded by the learned Commercial Court in the impugned order, is outlined below.

“17. In the reply argument the learned senior counsel for the plaintiff submitted that at no point of time the plaintiff is escaping from its liability as a guarantor for the loan. On the other hand, the plaintiff is only seeking for determination of the value of its share and till then the plaintiff cannot be proceeded against by the defendant bank by undertaking any coercive measures. In other words the plaintiff is seeking in determination of liability under dated 06.07.2018”

⁴ (2025) 4 SCC 38

46. It is at once clear from the above that PEL has essentially filed a suit to preempt and obstruct the proceedings initiated by the SBI before the NCLT under the IBC and under the SARFAESI Act and to prevent SBI from initiating any recovery proceedings under the RDB Act.

47. As noted hereinbefore, it is the PEL's case that its liability under the guarantee is nil, as it is confined to the value of its share in the mortgage property and the mortgage property is confined to the Principal Borrower's share in the real estate development, that is, 61 residential units in the project with a proportionate share of the subject land (i.e., land measuring 4 acres 38 guntas falling in Survey No.352 of Hulimangala Village, Jigani Hobli, Anekal Taluk, Bengaluru). However, it is SBI's case that the PEL's liability in the guarantee deed executed is coextensive with the liability of the Principal Borrower and is not restricted.

48. It is once clear from the above that the PEL's suit is essentially to reaffirm its defence to the claim set up by SBI. It is important to note that PEL has not raised any claim against SBI. But has sought a declaration holding that it has no liability under the guarantee deed executed by it. It is thus apparent that this suit

essentially covers the subject matter which would fall within the jurisdiction of the DRT under the RDB Act.

49. The written submissions filed by Mr Raghavan indicate that the SBI has already filed an original application before the DRT, being OA No.1373/2024. The contention that PEL was not precluded from filing a suit because, at the material time, SBI had not filed any application under the RDB Act is also without merit.

50. It is well settled that the jurisdiction of the Civil Courts, in respect of matters which the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal is empowered to determine under the SARFAESI Act, is excluded.

51. Section 34 of the SARFAESI Act, which ousts the jurisdiction of the civil court, reads as under:

34. Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)."

52. A plain reading of Section 34 of the SARFAESI Act indicates that it has two limbs. First, that the jurisdiction of the Civil Court to

entertain a suit or any proceeding in respect of matters, which can be determined by the Debts Recovery Tribunal or the Appellate Tribunal are excluded. And second, that no injunction can be granted by any court or any other authority in respect of any action taken or to be taken pursuant to the powers conferred under the SARFAESI Act or RDB Act. We may also note that Section 35 of the SARFAESI Act expressly provides that the provisions of the SARFAESI Act have an overriding effect over any other law inconsistent with the SARFAESI Act.

53. In **Mardia Chemicals Limited and Others v. Union of India and Others**⁵, the Supreme Court had authoritatively held that the jurisdiction of the Civil Court was barred in respect of all matters which could be determined by the Debts Recovery Tribunal even though no measures under Section 13(4) of the SARFAESI Act were taken.

54. It is also apposite to refer to the following extract of the decision of the Supreme Court in **Punjab & Sind Bank v. Frontline Corporation Limited**⁶:

“20. The issue as to the exclusion of the jurisdiction of a civil court is no more res integra. The provisions of

⁵ (2004) 4 SCC 311

⁶ (2023) 16 SCC 331

Section 34 of the Sarfaesi Act have been considered by a Bench of three Judges of this Court in *Mardia Chemicals Ltd. v. Union of India* [*Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311]. It will be relevant to refer to the following observations of this Court in the said case : (SCC pp. 349-50, paras 50-51)

“50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken “or to be taken in pursuance of any power conferred under this Act”. That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.

51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English mortgages. We find such a scope having been recognised in the two decisions of the Madras High Court which have been relied upon

heavily by the learned Attorney General as well appearing for the Union of India, namely, *V. Narasimhachariar* [*V. Narasimhachariar v. Egmore Benefit Society*, 1954 SCC OnLine Mad 352 : AIR 1955 Mad 135] , AIR at pp. 141 & 144, a judgment of the learned Single Judge where it is observed as follows : (SCC OnLine Mad para 22 : AIR para 22)

‘22. The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are twofold in character. The mortgagor can come to the court before sale with an injunction for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgagee, must clearly disclose a fraud or irregularity on the basis of which relief is sought : *Adams v. Scott* [*Adams v. Scott*, (1859) 7 WR 213, 249] . I need not point out that this restraint on the exercise of the power of sale will be exercised by courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing moneys on mortgages rely. (See Ghose, Rashbehary : *Law of Mortgages*, Vol. II, 4th Edn., p. 784.)’ ”

21. It could thus be seen that this Court in *Mardia Chemicals* [*Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311] has held that the jurisdiction of the civil court is barred in respect of matters which a DRT or an Appellate Tribunal is empowered to determine in respect of any action taken “or to be taken in pursuance of any power conferred under this Act”. The Court has held that the prohibition covers even matters which may be taken cognizance of by the DRT though no measure in that direction has so far been taken under sub-section (4) of Section 13 of the Sarfaesi Act. It has been held that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. It has categorically been held that any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The Court held that the bar of civil court thus applies to all such matters which may be taken cognizance of by the DRT, apart from those matters in which measures have already

been taken under sub-section (4) of Section 13 of the Sarfaesi Act.”

55. It is material to note that Section 34 of the SARFAESI Act proscribes a court or any other authority from issuing an injunction in respect of action ‘taken or to be taken’ pursuant to any power conferred by or under (i) the SARFAESI Act, or (ii) the RDB Act.

56. Thus the contention that the PEL was not precluded from filing a suit because SBI had not initiated any action under the SARFAESI Act or the RDB Act, is unmerited. Section 34 of the SARFAESI Act expressly proscribes the court from issuing an injunction in respect of any action that had been “taken or to be taken”. Thus, even though no proceedings had been instituted under the RDB Act when the suit was filed, no injunction could have been granted by the learned Commercial Court as Section 34 of the SARFAESI Act also covered matters in respect of which action could be taken, though not taken, under the SARFAESI Act or the RDB Act.

57. As noted above, the dispute in the suit centres around PEL's liability under the guarantee deed. Plainly, the learned Commercial Court could not have issued any injunction that would, in effect,

restrain SBI from instituting or pursuing any action under the SARFAESI Act or the RDB Act.

58. We may, at this stage, briefly examine the matters which the Debts Recovery Tribunal or the Appellate Tribunal are empowered to determine under the SARFAESI Act.

59. Section 13 of the SARFAESI Act contains provisions for the enforcement of a security interest. Under Section 13(2), if the borrower has defaulted, the secured creditor is entitled to issue a notice calling upon a borrower to discharge his full liability to the secured creditor within a period of sixty days from the date of the notice. In terms of Sub-section (3A) of Section 13 of the SARFAESI Act, the borrower is entitled to make a representation on receipt of a notice under Section 13(2). If the borrower makes such a representation, the secured creditor must consider it and communicate the reasons for accepting or rejecting the representation.

60. If the borrower fails to discharge his liability, the secured creditor is entitled to take action under Section 13(4) of the SARFAESI Act and take possession of the secured assets or take over the management of the business of the borrower, including the

right to transfer by way of lease, assignment or sale for realising the secured assets. The secured creditor can also appoint a person to manage the secured asset.

61. Any person aggrieved by the measures taken under Section 13(4) of the SARFAESI Act, is entitled to make an application to the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. By virtue of Section 17(2) of the SARFAESI Act, the Debts Recovery Tribunal is required to consider whether the measures taken by the secured creditor under Section 13(4) of the SARFAESI Act are in accordance with the provisions of SARFAESI Act and the rules thereunder. A notice under Section 13(2) of the SARFAESI Act can only be issued once there is a default by the borrower. Action under Section 13(4) of the SARFAESI Act can be taken only if the liability demanded under Section 13(2) is not discharged. The question of whether a notice under Section 13(2) of the SARFAESI Act was issued in accordance with the SARFAESI Act would involve the question of whether there was a default by the borrower. Thus, the question whether there has been a default on the part of the borrower can be agitated before the DRT under Section 17 of the SARFAESI Act.

62. In view of the above, the PEL's claim that it has not defaulted in its obligations under the guarantee deed could be determined by the Debts Recovery Tribunal under Section 17 of the SARFAESI Act if measures under Section 13(4) were taken. Admittedly, a notice under Section 13(2) of the SARFAESI Act was issued, and the PEL was called upon to make the payment. As noted above, it is the PEL's case that it has no liability to make a payment under the guarantee deed and thus, there is no default on its part. Plainly, the Debts Recovery Tribunal has jurisdiction to determine this question. It follows that the jurisdiction of the Civil Court or any authority to consider the same stood ousted by virtue of Section 34 of the SARFAESI Act. And, in any event, Section 34 of the SARFAESI Act prohibited the issuance of the order of injunction.

63. The RDB Act and the SARFAESI Act constitute a scheme for the recovery of debts by banks and financial institutions and for the enforcement of a security interest by secured creditors. Both enactments contain provisions excluding the civil courts from adjudicating matters that could be determined and adjudicated by the Debts Recovery Tribunal and the Appellate Tribunal under the respective enactments.

64. In view of the above, we are unable to accept that the learned Commercial Court had jurisdiction to entertain PEL's suit, which, in essence, seeks adjudication of its liability to SBI under the guarantee deed. In any event, no injunction could have been issued restraining SBI from taking action which had the effect of injuncting SBI from taking or proceeding with any action under the SARFAESI Act or the RDB Act.

65. It is also relevant to refer to Sections 17 and 18 of the RDB Act. The same are set out below:

“17. Jurisdiction, powers and authority of Tribunals.—(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(1A) Without prejudice to sub-section (1),—

(a) the Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain and decide applications under Part III of Insolvency and Bankruptcy Code, 2016 (31 of 2016).

(b) the Tribunal shall have circuit sittings in all district headquarters.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

(2A) Without prejudice to sub-section (2), the Appellate Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain appeals against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

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18. Bar of jurisdiction.—On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17:

Provided that any proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 (1 of 2013) under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) shall be continued and nothing contained in this section shall, after such commencement, apply to such proceedings.”

66. The plain language of Section 17 of the RDB Act makes it amply clear that the DRT has jurisdiction to entertain and decide any application by banks and financial institutions for the recovery of debts due to them. By virtue of Section 18 of the RDB Act, no Court or any authority has, or is entitled to exercise, jurisdiction concerning the matters specified in Section 17. Considering the explicit wording of Section 18, the learned commercial court could not have entertained a suit that primarily seeks to establish PEL’s liability under the guarantee deed, and therefore, SBI’s claim for recovery of the amount owed by PEL.

67. The import of Mr Raghavan’s arguments is that whilst the Commercial Court has no jurisdiction in relation to matters specified in Section 17 of the RDB Act, the Court could grant an injunction order restraining the assumption of jurisdiction by the DRT by

preventing a bank or a financial institution from filing an application for recovery of debts before the DRT. In our view, the contention is fundamentally flawed.

68. It is necessary to note the language of Section 18. The import of the words “in relation to matters specified in Section 17”, as used in Section 18, must be understood as referring to the nature of matters in respect of which the jurisdiction of a Civil Court is barred. Thus, matters concerning the recovery of debts by banks, which can be adjudicated by the DRT, are beyond the jurisdiction of the Civil Court to examine. In the present case, PEL has couched its defence to the SBI's claim for recovery of debts as a declaratory suit. The subject matter of the plaint is in substance PEL's defence to SBI's claim for recovery. In our view, the suit is clearly barred under Section 18 of the RDB Act.

69. At this stage, we may also note the Supreme Court's decision in **Bank of Rajasthan v. VCK Shares**⁷. In that case, the Court considered whether a borrower could file an independent suit to assert a claim instead of filing a counterclaim in the action for recovery. In this context, the Court observed as under:

⁷ (2023) 1 SCC 1

“43. We must note at the threshold itself that there are no restrictions on the power of a Civil Court under Section 9 of the Code unless expressly or impliedly excluded. This was also reiterated by a Constitution Bench of this Court in *Dhulabhai vs. State of Madhya Pradesh*. Thus, it is in the conspectus of the aforesaid proposition that we will have to analyse the rival contentions of the parties set out above. Our line of thinking is also influenced by a Three-Judges Bench of this Court in *Dwarka Prasad Agarwal v. Ramesh Chander Agarwal* where it was opined that Section 9 of the Code confers jurisdiction upon Civil Courts to determine all disputes of civil nature unless the same is barred under statute either expressly or by necessary implication and such a bar is not to be readily inferred. The provision seeking to bar jurisdiction of a Civil Court requires strict interpretation and the Court would normally lean in favour of construction which would uphold the jurisdiction of the Civil Court.

44. Now, if we turn to the objective of the RDB Act read with the scheme and provisions thereof; it is abundantly clear that a summary remedy is provided in respect of claims of banks and financial institutions so that recovery of the same may not be impeded by the elaborate procedure of the Code. The defendant has a right to defend the claim and file a counterclaim in view of sub-Sections (6) and (8) of Section 19 of the RDB Act. In case of pending proceedings to be transferred to the DRT, Section 31 of the RDB Act took care of the issue of mere transfer of the Bank's claim, albeit without transfer of the counterclaim. Thus, if the debtor desires to institute a counterclaim, that can be filed before the DRT and will be tried along with the case. However, it is subject to a caveat that the bank may move for segregation of that counterclaim to be relegated to a proceeding before a Civil Court under Section 19(11) of the RDB Act, though such determination is to take place along with the determination of the claim for recovery of debt.

45. We are thus of the view that there is no provision in the RDB Act by which the remedy of a civil suit by a defendant in a claim by the bank is ousted, but it is the matter of choice of that defendant. Such a defendant may file a counterclaim, or may be desirous of availing of the more strenuous procedure established under the Code, and that is a choice which he takes with the consequences thereof.

46. We may notice that the RDB Act was amended from time to time, including by amendments made under Act 1 of 2000, Act 30 of 2004, Act 1 of 2013 and Act 44 of 2016. The anomaly, inter alia, initially sought to be cured was on account of the non-availability of provisions on counterclaim and set-off. It is to get over such a scenario that amendment through Act 1 of 2000 was made by the Legislature itself to cure the problem. The Legislature did not, at any stage, make any further amendment for excluding the jurisdiction of the Civil Court in respect of a claim of a defendant in such a proceeding being filed along with the suit. The Legislature in its wisdom has also not considered it appropriate to bring any amendment to enhance the powers of the DRT in this respect.”

70. The Supreme Court held that a suit by a borrower to make a claim against a bank or financial institution is not barred. Section 18 of the RDB Act essentially bars the Court's jurisdiction to adjudicate a claim by a bank or financial institution for the recovery of debts.

71. As noted in the present case, the nature of the suit filed by PEL is essentially its defence to the SBI's demand. PEL has not set up any separate claim against SBI. Whilst the Supreme Court held that a borrower could maintain a separate suit to claim against the bank, it also held that, if any such suit was filed, the proceedings before the DRT could not be stayed. It is relevant to refer to the following directions issued by the court:

“52. We however have a word of caution keeping in mind the nature of powers exercised by the DRT and the objective of its creation. The interpretations in *Abhijit Tea Co.* and *Ranjan Chemicals* (supra), seeking to give power of transfer to the Civil Court, whether by consent or

otherwise, were apparently predicated on an apprehension that a defendant may launch a suit before the Civil Court in order to delay the proceedings before the DRT.

53. We certainly would not like that the process envisaged under the RDB Act be impeded in any manner by filing of a separate suit if a defendant chooses to do so. A claim petition before the DRT has to proceed in a particular manner and would so proceed. There can be no question of stay of those proceedings by way of a civil proceeding instituted by a defendant before the Civil Court. The suit would take its own course while a petition before the DRT would take its own course. We appreciate that this may be in the nature of parallel proceedings but then it is the defendant's own option. We see no problem with the same as long as the objective of having expeditious disposal of the claim before the DRT under the RDB Act is not impeded by filing a civil suit. Thus, it is not open to a defendant, who may have taken recourse to the Civil Court, to seek a stay on the decision of the DRT awaiting the verdict of his suit before the Civil Court as it is a matter of his choice.

54. We thus make it abundantly clear that in case of such an option exercised by the defendant who filed an independent suit, whatever be the nature of reliefs, the claim petition under the RDB Act would continue to proceed expeditiously in terms of the procedure established therein to come to a conclusion whether a debt is due to a bank and/or financial institution and whether a recovery certificate ought to be issued in that behalf."

72. In view of the express language of Section 34 of the SARFAESI Act and the authoritative direction issued by the Supreme Court in **Bank of Rajasthan** (supra), the impugned order restraining SBI to take further steps pursuant to the guarantee deed, cannot be sustained.

73. The contention that SBI is precluded from raising any ground regarding the jurisdiction of the Commercial Court to entertain the suit is without any merit. It is well settled that the question of law can be raised at any stage. The Supreme Court has in several decisions held that where a question of law arises that can be decided without additional evidence; courts should not refuse to consider it merely on the ground that it was not raised earlier⁸. The Supreme Court in **Vasantkumar Radhakisan Vora v. Board of Trustees of the Port of Bombay**⁹ and subsequently in **Odisha State Financial Corpn. v. Vigyan Chemical Industries & Ors.**¹⁰ explained that pure questions of law, which go to the root of the jurisdiction in a case, can be raised for the first time in an appeal¹¹.

74. Additionally, if the Court is prohibited from entertaining any action or issuing any injunction, it would be necessary for the Court to take note of the same, notwithstanding that the parties have not taken any such plea¹².

⁸ *Masalti v. State of U.P.*, 1964 SCC OnLine SC 30; *Chandrika Misir v. Bhaiya Lal* (1973) 2 SCC 474; *P.M.A. Metropolitan v. Moran Mar Marthoma*, 1995 Supp (4) SCC 286; *Saurav Jain v. A.B.P. Design* (2022) 18 SCC 633

⁹ (1991) 1 SCC 761

¹⁰ 2025 SCC OnLine SC 1609

¹¹ (2025) SCC Online SC 1609

¹² *R. Kandasamy v. T.R.K. Sarawathy*, (2025) 3 SCC 513

75. Mr. Raghavan's argument that a challenge to jurisdiction must be explicitly pleaded and cannot be raised otherwise is unfounded. His reliance on the Supreme Court's decision in ***Sulthan Said Ibrahim*** (*supra*) is misplaced. In that decision, one of the issues before the court was whether the application to delete the appellant's name from the list of parties was barred by *res judicata*. The Court held that, in that case, the appellant had been impleaded as a legal heir under Order XXII Rule 4 of the CPC after proper inquiry by the Court and had participated in the proceedings without objection. However, later, he filed an application to have his name removed, which the Supreme Court noted raised serious doubts about its bona fides. The said principle is not applicable in the present case. First, the SBI has never accepted the jurisdiction of the Commercial Court. Although SBI has not explicitly stated its objection to the jurisdiction, it has clearly denied that the Commercial Court had jurisdiction, as was averred by PEL.

76. SBI filed an application seeking rejection of the plaint under Order VII Rule 11 of the CPC on the ground that the Commercial Court could not have jurisdiction. The said application (I.A.No.6) was dismissed by the learned Commercial Court, by an order dated 01.03.2025. SBI did not accept that order. Since the order was not

appealable under Order XLIII Rule 1 of the CPC, SBI filed a writ petition, which is pending.

77. Mr Raghavan's contention that SBI is estopped from questioning the jurisdiction of the Commercial Court in these proceedings because it has filed a writ petition, is insubstantial. The contention that SBI is precluded from instituting any recovery proceedings until PEL's liability under the guarantee deed is determined is equally bereft of any merit. According to SBI, PEL's liability is co-extensive with the Principal Borrower's. It has quantified its claim against the Principal Borrower; therefore, it is entitled to institute proceedings to recover the said amount. PEL's claim that its liability is nil as it is confined to its interest in the mortgaged land, which admittedly is nil, is clearly PEL's defence against the SBI's claim. SBI's right to institute proceedings for recovery of the amounts claimed by it or enforce its security interest, is not contingent on the determination of PEL's liability in a separate action.

78. The import of Mr Raghavan's contention is that PEL's liability under the guarantee deed must be adjudicated in separate proceedings before SBI can institute any proceedings under the

RDB Act, IBC, or SARFAESI Act. This contention is ill-founded and without merit, and is accordingly rejected.

79. The said contention was advanced on the strength of the Supreme Court's decision in ***Punjab National Bank*** (*supra*). However, a plain reading of the said judgment indicates that it has no application to the facts of the present case. In the said case, the bank had instituted a suit for recovery against the principal borrower (Company), and one Ranjit Singh, who was the director of the Managing Agent. The amount claimed was the balance of the cash credit. Since the petition for winding up of the company had been filed in the High Court of Allahabad, the trial Court found that the suit was not maintainable against the Company without obtaining the leave of the Company Court. The trial court had no jurisdiction to adjudicate on the merits of the bank's claims, as under the scheme, the Board of Trustees were to scrutinise the claim, and their decision was final. The suit against Ranjit Singh was rejected as premature on the ground that he had not defaulted in making any payment of dues under the terms of the guarantee as the dues of the Company were not determined. Two appeals were preferred against the trial court's decree dismissing the suit. Insofar as dismissal of suit against Ranjit Singh was concerned, the Court

found that the bond executed by him expressly provided that the guarantee was to the extent of the “ultimate balance” remaining due to the bank on such cash credit account. The ‘ultimate balance’ was to be determined after taking into account the dividends, compositions and payments towards the debt. The same had not been determined as the Board of Trustees, which was required to take a final decision, had not made a decision regarding the balance payable by the Company. Accordingly, the decree passed by the trial Court was confirmed. In the aforesaid context, the Supreme Court faulted the courts for dismissing the suit against Ranjit Singh. However, it was held that the suit was required to be stayed until the ‘ultimate balance’ was determined. It is material to note that in the said case, the ultimate balance was not required to be determined by the court, but by the Board of Trustees. In the present case, the learned DRT has the jurisdiction to determine the amount due to SBI under the guarantee deed. The learned NCLT has the jurisdiction to determine whether PEL has defaulted in its payment obligations.

80. As noted at the outset, SBI has also filed a petition under Section 7 of the IBC, initiating the Corporate Insolvency Resolution

Process [**CIRP**] against the PEL before NCLT. It is necessary to refer to Section 7 of the IBC, which is set out below.

“7. Initiation of corporate insolvency resolution process by financial creditor.—(1) A financial creditor either by itself or jointly with 1 [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt

owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

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

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

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

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

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

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

Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.

(5) Where the Adjudicating Authority is satisfied that—

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

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

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

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

(7) The Adjudicating Authority shall communicate—
(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

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

81. In terms of Section 7(1), the financial creditor (in this case SBI) is entitled to file an application for initiating CIRP against a corporate debtor (in this case PEL) before the adjudicating authority (NCLT).

82. SBI has made a demand for payment of the dues claimed by it and PEL has not discharged the said demand. According to SBI, a default has occurred. Thus, consistent with it stand, SBI has initiated the CIRP by filing an application under Section 7 of IBC. In terms of Sub-section (4) of Section 7 of IBC, the Adjudicating Authority is required to ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor. The question of whether PEL has defaulted, thus has to be ascertained by the learned NCLT on the basis of the

material produced, which would necessarily also include the guarantee deed admittedly executed by the PEL.

83. In terms of Section 63 of the IBC no Civil Court has authority or jurisdiction to entertain any proceedings in respect of any matter on which NCLT or National Company Law Appellate Tribunal [NCLAT] has jurisdiction under the IBC. It is relevant to refer to Section 63 of the IBC, which bars the jurisdiction of a Civil Court.

The same is set out below:

“63. Civil court not to have jurisdiction.—No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code”.

84. By virtue of Section 63 of IBC, no Civil Court has authority or jurisdiction to entertain a suit or proceedings in respect of any matter on which NCLT or NCLAT has jurisdiction under that law.

85. Section 60 of the IBC stipulates that the Adjudicating Authority in relation to insolvency, resolution and liquidation for corporate persons, including corporate debtors of the company, is the NCLT, having territorial jurisdiction over the place where the registered office of the corporate person is located.

86. Thus, the learned NCLT has exclusive jurisdiction to decide on SBI's application and to ascertain whether there is a default on the part of PEL. Plainly, the learned Commercial Court has no jurisdiction to interdict the learned NCLT from exercising its jurisdiction to ascertain whether PEL has defaulted in its financial obligations. The order injuncting SBI from proceeding pursuant to the guarantee deed, in effect, interdicts SBI from pursuing its application before the learned NCLT.

87. Before concluding, it is also relevant to refer to the terms of the guarantee deed. As noted, at the outset, the name of the guarantors as reflected in the guarantee deed also mentions "For the value not below the value of their share of land mortgaged" in parentheses against the name PEL. However, the body of the guarantee deed contains no such qualification or notation. The relevant clauses of the guarantee deed – as extracted hereinbefore – do not restrict or limit the PEL's liability under the guarantee deed.

88. It is also not disputed that the liability of a surety or a guarantor is coextensive with that of the principal borrower.

89. In **Industrial Investment Bank of India Limited v. Biswanath Jhunjhunwala**¹³, the Supreme Court held that initiating proceedings in the National Company Law Tribunal against a principal debtor would not be a bar for the institution or continuation of proceedings against a guarantor. In **Union Bank of India v. Satyawati Tondon**¹⁴, the Supreme Court noted that the Government of India had accepted the recommendations of the Narasimham Committee and the Andhyarujina Committee, constituted by the Central Government, to examine the banking sector, which led to the enactment of the SARFAESI Act. The Supreme Court noted the object of the SARFAESI Act and held that the High Court had completely misdirected itself by assuming that the lender could not have initiated action against the guarantor without first making efforts to recover its dues from the borrower.

90. Thus, in our view, even if the suit was not barred and the issuance of the injunction as granted was not prohibited by law, the given facts did not warrant any order restraining SBI from taking steps pursuant to the guarantee furnished by PEL. The learned commercial court has completely misdirected itself in passing the impugned order.

¹³ (2009) 9 SCC 478

¹⁴ (2010) 8 SCC 110

91. In view of the above, the impugned order is unsustainable. The appeal is, accordingly, allowed and the impugned order is set aside.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

KPS/KMV