Zee Entertainment Enterprises Limited Vs Indusind Bank Limited And Anr.

Court: Delhi High Court

Date of Decision: Sept. 13, 2022

Acts Referred: National Company Law Tribunal Rules, 2016 â€" Rule 11
Insolvency and Bankruptcy Code, 2016 â€" Section 7, 9, 10, 14, 60(5), 64(2), 238
Specific Relief Act, 1963 â€" Section 41(b)
Indian Contract Act, 1872 â€" Section 128
Code Of Civil Procedure, 1908 â€" 151

Hon'ble Judges: Manmohan, J; Jyoti Singh, J

Bench: Division Bench

Advocate: Neeraj Kishan Kaul, Dayan Krishnan, Bindi Dave, Aman Raj Gandhi, Deepak Joshi, Vardhan Rajaj, Pranay Toteja, Sanjeevi Seshadri, Dr. Abhishek Manu Singhvi, Diwakar Maheshwari, Karun Mehta, Aditya Vikram Singh, Pratiksha Mishra

Final Decision: Dismissed/Disposed Of

Judgement

Manmohan, J

CM APPL.12152/2022 in FAO (OS) (COMM) No.15/2021

1. The Respondent No.1-bank has filed the present application seeking clarification of the order dated 3rd December, 2021 to the effect that this

Court never prohibited Respondent No.1-bank from initiating or maintaining proceedings under the Insolvency and Bankruptcy Code, 2016 (for short

Ã¢â‚¬ËœIBCÃ¢â‚¬â„¢) against the Appellant-Zee.

2. It is the case of the Respondent No.1-bank/applicant that the Appellant-Zee is the guarantor to the loan availed by the Respondent No.2 from

Respondent No.1-bank in terms of the Debt Service Reserve Account Guarantee Agreement dated 29th August, 2018 (for short Ã¢â‚¬ËœDSRA Guarantee

AgreementÃ¢â‚¬â„¢), which provides that in case of default of Respondent No.2, Respondent No.1-bank can invoke the DSRA Guarantee Agreement

and recover the amount that is due from Respondent No.2, from Appellant-Zee. On 1st October, 2020, Respondent No.1Ã‚bank issued notice to

Appellant-Zee invoking the DSRA Guarantee Agreement and calling upon the Appellant-Zee to pay the amount of Rs.83,70,14,289/-.

PROCEEDINGS BEFORE THE LEARNED SINGLE JUDGE AND DIVISION BENCH

3. The Appellant-Zee filed a civil Suit being CS(OS)(COMM) No. 500/2020, along with an application being I.A.10556/2020 seeking the interim relief

that the Respondent No.1-bank be restrained from seeking recovery of any amount under the DSRA Guarantee Agreement in terms of the

Respondent No.1-bankÃ¢â‚¬â„¢s notice dated 01st October, 2020. The reliefs sought for in the interim application being I.A. 10556/2020 are reproduced

hereinbelow:Ã‚â€‹

Ã¢â‚¬Å“i. staying the effect and implementation of the demand raised by Defendant No.1 under its letter dated 01 October 2020;

ii. directing Defendant No.2 to replenish the DSRA Account with amount equivalent to one quarterÃ¢â‚¬â„¢s interest and directing Defendant

No.1 to accept the same;

iii. restraining Defendant No.1 and/or its associates/agents/employees from seeking recovery of the demand under the communication dated

01 October 2020 and/or recovering any amount beyond the scope of guarantee provided by the Plaintiff in terms of the DSRA Guarantee

Agreement dated 29 August 2018.

iv. restraining Defendant No.1 and/or its associates/agents/employees formal or informal, to the stock exchanges, credit information

companies and credit rating agencies in relation to the Plaintiff arising from/relating to the purported defaults under the DSRA Guarantee

Agreement dated 29 August 2018Ã¢â‚¬Â¦Ã¢â‚¬â€‹

4. The interim reliefs prayed for were rejected by learned Single Judge by way of the impugned order dated 21st December, 2020. The relevant

portion of the impugned order is reproduced hereinbelow:Ã‚â€‹

Ã¢â‚¬Å“16. Given these circumstances, I am not persuaded to hold that Zee has been able to make out a prima facie case for grant of ad-interim

injunction. Furthermore, if I were to grant an injunction, as sought by Zee, it would debilitate the BankÃ¢â‚¬â„¢s ability to take recourse to

remedies which are available to it in law for recovery of its dues. Therefore, in my opinion, the balance of convenience would tilt in favour

of the Bank. I am also not convinced that irreparable injury or harm would be caused to Zee as, at the end of the day, refusal of injunction

would involve outflow of funds, save and except, the apprehension of Zee that the Bank would communicate the information to the stock

exchanges, credit information companies, and credit rating agencies. Insofar as the apprehension with regard to the flow of information to

the stock exchanges, credit information companies, and credit rating agencies is concerned, that is a risk that Zee ought to have factored

when it took the decision to enter into the DSRA Guarantee Agreement. Since I have, as indicated above, not been able to persuade myself

that Zee has established a prima facie case, this aspect cannot be a factor which would have me rule in favour of Zee. In any case, for Zee

to obtain an injunction, it was required to satisfy the Court with regard to all three tests i.e. prima facie case, balance of convenience and

irreparable harm and injury.Ã¢â‚¬â€‹

5. Appellant-Zee filed the present appeal being FAO(OS)(COMM) No.15/2021 challenging the order passed by the learned Single Judge. Along with

the present appeal, the Appellant-Zee filed an application for stay. The reliefs sought for in the said application are reproduced hereinbelow:Ã‚â€‹

Ã¢â‚¬Å“(a) stay the effect and implementation of the demand raised by Respondent No.1 under its letter dated 01.10.2020;

(b) direct Respondent No.2 to replenish the DSRA Account with amount equivalent to one quarterÃ¢â‚¬â„¢s interest and directing Respondent

No.1 to accept the same;

(c) restrain Respondent No.1 and / or its agents/associates/employees from seeking recovery of the demand under the communication dated

01.10.2020 and/or recovering any amount beyond the scope of guarantee provided by the Appellant in terms of the DSRA Guarantee

Agreement dated 29.08.2018;

(d) restrain Respondent No.1 and/or its agents/associates/employees from addressing any communication, whether formal or informal, to the

stock exchanges, credit information companies and credit rating agencies in relation to the Appellant arising from/relating to the purported

defaults under the DSRA Guarantee Agreement dated 29.08.2018;

(e) pass such other and/or further order(s) / direction(s) as this HonÃ¢â‚¬â„¢ble Court may deem fit in the interest of justice, equity and fair

play.Ã¢â‚¬â€‹

6. On 25th February, 2021, learned Predecessor Division Bench directed that no coercive action be taken against the Appellant-Zee till the next date

of hearing. The order dated 25th February, 2021 is reproduced hereinbelow:Ã‚â€‹

Ã¢â‚¬Å“Issue notice to the respondents. Mr.Diwakar Maheshwari, the learned counsel accepts notice for respondent No.1. Ms.Ritwika Nanda,

the learned counsel accepts notice for respondent No.2. They seek time to get instructions and to file the replies. Replies, if any, be filed

before the next date of hearing. List on 5th April, 2021. In the meanwhile, as an ex parte ad interim relief, we direct that no further coercive

steps shall be initiated against the appellant by the respondent Bank, insofar as the dispute in question is concerned, till the next date of

hearing.Ã¢â‚¬â€¹

7. The aforesaid order was modified on 3rd December, 2021, stating that Ã¢â‚¬Ëœwe see no reason to restrain Respondent No.1 to take recourse to the

legal remedies towards recovery of outstanding loan amounts. However, since this Court is seized of the matterÃ¢â‚¬Â¦no final order shall be

passedÃ¢â‚¬Â¦without leave of this Court. Liberty is reserved with the Appellant to approach this Court, in case the need so arises.Ã¢â‚¬â„¢

8. Thereafter, on 25th January, 2021, Respondent No.1-bank filed an application under Section 7 of IBC before NCLT Mumbai alleging default of

Rs.92,74,25,742/-.

9. On 21st February, 2022, the Appellant-Zee filed an application before NCLT under Section 60(5) of IBC contending that Section 7 application was

in contempt of order dated 3rd December, 2021 passed by this Court. The relevant extract of said I.A. is reproduced below:Ã‚â€‹

Ã¢â‚¬Å“5.1 The Applicant has filed this Application before this HonÃ¢â‚¬â„¢ble Tribunal under Section 60(5) of the Code read with Rule 11 of the

National Company Law Tribunal Rules, 2016, seeking an outright dismissal/rejection of the captioned Company Petition at the threshold on

the ground that filing of the captioned Company Petition by the Respondent is an act is breach/violation of the Orders dated 25th February,

2021 and 3rd December, 2021 passed by the HonÃ¢â‚¬â„¢ble Delhi High Court in proceedings instituted by the Applicant against the

Respondent. As such, the captioned Company Petition ought to be dismissed by this HonÃ¢â‚¬â„¢ble Tribunal. Ã¢â‚¬Â¦ 5.11Ã¢â‚¬Â¦After considering the

issues, vide its Order of 25th February 2021, the Ld. Division Bench was pleased to direct that no coercive actions shall be taken by the

Respondent against the Applicant insofar as the dispute in question is concerned. The reason was obvious. Since the HonÃ¢â‚¬â„¢ble High was

seized of the matter, it would be futile for the same issue to be raised before any other Court or Tribunal or allow the Respondent to

continue to take steps which were prejudicial to the interest of the Applicant.

5.12 Several months later, at the further hearing of the Appeal on 3rd December 2021, the Respondent requested for modification of the

aforesaid Order dated 25th February 2021 to the extent that the respondent be permitted to take resort to appropriate proceedings for

recovery of amounts allegedly due from the Applicant. On hearing the parties, the Ld. Division Bench modified its earlier Order by

permitting the Respondent Ã¢â‚¬Å“to take recourse to the legal remedies for recovery of the outstanding loan amountsÃ¢â‚¬ which may be due

from the Applicant with a caveat however that no final orders shall be passed in any such proceedings which may be instituted by the

Respondent without the leave of the HonÃ¢â‚¬â„¢ble High Court. Pertinently, the RespondentÃ¢â‚¬â„¢s submission before the Ld. Division Bench of

the HonÃ¢â‚¬â„¢ble Delhi High Court, as is recorded in the Order dated 3rd December 2021, was only for a modification to the extent that it be

permitted to file Ã¢â‚¬Ëœrecoveryâ€™ proceedings and none other.

5.13. It is thus seen that the HonÃ¢â‚¬â„¢ble Delhi High Court has nowhere in its Order dated 3rd December 2021 withdrawn its earlier

directions issued vide the Order of 25th February 2021 viz. that no coercive steps shall be taken against the Applicant. The directions

issued vide the Order dated 3rd December 2021 are a mere modification and that too to the limited extent as prayed for by the Respondent

at the said hearing seeking permission to take recourse to its legal remedies for Ã¢â‚¬Ëœrecoveryâ€™ of any alleged outstanding loan amounts

due from the Applicant. So as to avoid any conflicting Orders by different courts/tribunals, it was further directed that in any such

Ã¢â‚¬Ëœrecoveryâ€™ proceedings which the Respondent may institute against the Applicant, the Court or Tribunal hearing such mater would

not pass any final Order without the leave of the HonÃ¢â‚¬â„¢ble Delhi High Court. Thus, the only recourse which was kept open by the

HonÃ¢â‚¬â„¢ble Delhi High Court was for the Respondent to institute Ã¢â‚¬Ëœrecoveryâ€™ proceedings against the Applicant. Ã¢â‚¬Â¦

5.16 Despite the above, the Respondent has in a mala fide attempt to overreach the aforesaid Orders, filed the captioned Company Petition

before this HonÃ¢â‚¬â„¢ble Tribunal. As can be seen from the above, filing of the captioned Company Petition is in gross breach/violation of

the aforesaid Orders dated 25th February 2021 and 3rd December 2021 passed by the HonÃ¢â‚¬â„¢ble Delhi High Court and the Respondent

is guilty of contempt of court. As such, the captioned Company Petition ought to be dismissed at the very threshold.Ã¢â‚¬â€‹

10. In view of the said application filed by the Appellant-Zee before NCLT, Respondent No.1-bank filed the present application being CM

Appl.12152/2022 seeking clarification of the order dated 3rd December, 2021, wherein it is averred that the Appellant-Zee is seeking to distort and

misinterpret the order dated 3rd December, 2021 out of context to mean that the order prohibits the Respondent No.1-bank from filing proceedings

under IBC.

11. On 11th March, 2022, a Contempt Petition (CC No. 286 of 2022) was filed by Appellant-Zee before this Court stating that filing of the application

under Section 7 of IBC by Respondent No.1-bank amounted to violation of orders dated 25th February, 2021 and 03rd December, 2021.

12. On 17th March, 2022, the Appellant-Zee filed an application before NCLT seeking rectification of the order dated 1st March, 2022 by deleting the

portion recording that the Appellant-Zee had undertaken to file a reply.

13. On 21st April, 2022, this Court issued notice in the present application and directed Appellant-Zee to file its reply. Further, the Court directed that

the Contempt Petition Ã¢â‚¬Ëœis transferred to this Court and directed to be listed along with the present AppealÃ¢â‚¬Â¦Ã¢â‚¬â„¢

14. Thereafter arguments in CM Appl. 12152/2022 and Contempt Petition (CC No.286 of 2022) were heard by this Court.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1-BANK/APPLICANT

15. Dr. Abhishek Manu Singhvi, learned Senior Advocate on behalf of Respondent No.1-bank stated that this Court vide order dated 3rd December,

2021, after extensively hearing the parties to the lis, modified the order dated 25th February, 2021 and granted liberty to Respondent No.1-bank to take

recourse to legal remedies available towards recovery of outstanding loan amounts. He emphasised that IBC was enacted by the Legislature based on

Bankruptcy Law Reforms Committee, Volume I dated 04th November, 2015, wherein the intent, purpose and objective of IBC was clearly laid down,

being shorter time to recover and better recovery under insolvency with a greater certainty about creditorsÃ¢â‚¬â„¢ rights in developing a corporate debt

market, including low loss in recovery. He submitted that under Section 7 of IBC, NCLT is empowered to adjudicate on the default committed by the

corporate debtor. The threshold for admission of a petition under Section 7 is determination of Ã¢â‚¬Ëœdefaultâ€™ and not the Ã¢â‚¬Ëœinabilityâ€™ to pay debts

which was required under the winding up regime under the Companies Act, 1956. He also stated that it is always open to the Appellant-Zee to take all

defences in the said petition as had been taken before this Court including that it had not committed any default under the DSRA Guarantee

Agreement, which is the precise reason why the Appellant-Zee had approached this Court.

16. He contended that by way of the present suit, the Appellant-Zee in effect seeks an anti-suit injunction against Respondent No.1-bank which is

apparent from the prayer: Ã¢â‚¬Ëœpass a decree of perpetual injunction in favour of the Plaintiff and against Defendant No. 1 from recovering the amount

demanded under communication dated 01.10.2020Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬â„¢

17. Dr. Abhishek Manu Singhvi, learned senior counsel submitted that suit filed by the Appellant-Zee before this Court was barred under Section

41(b) of the Specific Relief Act (Ã¢â‚¬ËœSRAÃ¢â‚¬â„¢) and Section 64(2) of IBC. The said Sections are reproduced below:Ã‚â€‹

Specific Relief Act

Ã¢â‚¬Å“41. Injunction when refused.Ã¢â‚¬"An injunction cannot be grantedÃ¢â‚¬" xxx xxx xxx

(b)to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is

sought.Ã¢â‚¬â€‹

The Insolvency and Bankruptcy Code, 2016

Ã¢â‚¬Å“64. Expeditious disposal of applications.Ã¢â‚¬

(2)No injunction shall be granted by any court, tribunal or authority in respect of any action taken, or to be taken, in pursuance of any

power conferred on the National Company Law Tribunal or the National Company Law Appellate Tribunal under this Code.Ã¢â‚¬â€‹

18. He submitted that Section 64(2) of IBC provides that no injunction shall be granted by any Court, Tribunal or Authority, in respect of any action

taken or to be taken in pursuance of any power conferred on the NCLT. He stated that in terms of Section 238 of IBC, provisions of IBC have an

overriding effect over other laws in force. He pointed out that the Bombay High Court in the case of Jotun India Private Limited v. PSL Limited, 2018

SCC OnLine Bom 1952, in the context of Section 41(b) SRA and Section 64(2) IBC has held that NCLT is not a Court subordinate to the High Court

and hence as prohibited by provisions of Section 41(b) of SRA, no injunction can be granted by the High Court restraining institution of proceedings in

NCLT against a Corporate Debtor.

19. He further submitted that it is an equally well settled proposition of law that in view of Section 128 of Indian Contract Act, 1872 a lender is at

liberty to proceed against a Guarantor without proceeding against the principal borrower. He submitted that the said principle has been reiterated in the

context of IBC proceedings by the NCLAT in the case of Ferro Alloys Corporation Ltd. v. Rural Electrification Corporation Limited, 2018 SCC

OnLine NCLAT 71, and the statutory appeal against the said judgment has been dismissed by the Supreme Court and on this anvil the argument of the

Appellant-Zee that if the Respondent No.1-bank had chosen not to initiate recovery proceedings against the principal borrower, it cannot proceed

against the Appellant-Zee, has no legs to stand on.

ARGUMENTS ON BEHALF OF APPELLANT-ZEE

20. Per contra, Mr. Neeraj Kishan Kaul, learned senior counsel for the Appellant-Zee submitted that the present application was not maintainable as

under the guise of a clarification, the Respondent No.1-bank was seeking a full-fledged review of 03rd December, 2021 order, which is impermissible

in law and cannot be done under Section 151 of the CPC. He submitted that Section 151 CPC cannot be invoked as a substitute for an appeal, revision

or review. In support of his submission, he relied upon the judgment of the Supreme Court in State of Uttar Pradesh & Ors. Vs. Roshan Singh & Ors.,

(2008) 2 SCC 488.

21. It was contended that the order dated 03rd December, 2021 passed by the learned Predecessor Division Bench did not permit the Respondent

No.1-bank to initiate insolvency proceedings against the Appellant-Zee. In support of his contention, he relied upon paragraphs 5 and 6 of the 03rd

December, 2021 order, which read as under:Ã‚â€‹

Ã¢â‚¬Å“5. Having heard the learned Senior Counsels, we see no reason to restrain Respondent No.1 to take recourse to the legal remedies

available towards recovery of the outstanding loan amounts. However, since this Court is seized of the matter and the Suit is also pending

before the learned Single Judge, we direct that no final order shall be passed in any proceeding so initiated by Respondent No.1, without

the leave of this Court.

6. Liberty is reserved with the Appellant to approach this Court, in case the need so arises.Ã¢â‚¬â€‹

22. He also contended that the Respondent No.1-bank never sought liberty from this Court to initiate Insolvency/IBC proceedings and only prayed for

modification to the limited extent that it may be permitted to file Ã¢â‚¬Ëœrecoveryâ€™ proceedings and none other. He submitted that orders of the Court

cannot be interpreted as per the whims / impressions drawn by the party especially when the orders are specific and/or their meanings and purport are

clear.

23. He emphasised that IBC proceedings are not recovery proceedings. He submitted that the term Ã¢â‚¬Ëœrecoveryâ€™ used in the December 3, 2021

order did not include nor can be interpreted to include an action under IBC. CIRP under IBC is principally and procedurally different from debt

recovery actions and cannot come within the contours of the permission granted by this Court in December 3, 2021 order. According to him,

CIRP/IBC proceedings are not proceedings for recovery of any dues but are rather intended to be solely for reorganization and insolvency resolution

of the corporate person. In support of his submissions, he relied upon the judgment of the Supreme Court in Dena Bank vs. C. Shivakumar Reddy,

(2021) 10 SCC 330.

24. He submitted that reliance of the Respondent No.1-bank upon Section 64(2) of IBC and Section 41(b) of the SRA were misplaced inasmuch as

the same cannot be read in isolation ignoring their intent and purpose. He submitted that Section 64(2) is a procedural Section and comes into play only

once an application has been made before the NCLT after the initiation of CIRP proceedings, and not at a pre-admission stage, for which there are

different procedures contemplated under Sections 7, 9 and 10 of the IBC. He submitted that the matter before NCLT Mumbai is at a pre-admission

stage and hence Section 64(2) of IBC has no applicability.

25. He submitted that Appellant-Zee cannot be left remediless in the face of an illegal/erroneous demand which in any event it is contesting before the

learned Single Judge of this Court. He further submitted that the suit filed by Appellant-Zee is for declaration and the consequential relief of injunction

is necessary to prevent multiplicity of judicial proceedings.

26. He also urged that this Bench ought not to go into the issue of maintainability of the suit at this stage and short-circuit the trial in the suit pending

before the learned Single Judge. He stated that DSRA Guarantee Agreement given by Appellant-Zee makes it abundantly clear that the same was a

very specific and limited guarantee, restricted only to ensure that the credit balance equivalent to one quarterÃ¢â‚¬â„¢s interest and principal (as and when

due) was required to be maintained by Respondent No.2 in the DSRA Account is maintained and to replenish the same in case of shortfall. He stated

that recitals 2 and 3 and Clauses 2, 4, 7 and 24 of the DSRA Guarantee Agreement clearly demonstrate that the obligation/liability of Appellant-Zee

was limited to the shortfall of credit balance in the DSRA. He submitted that Respondent No.1Ã‚bankÃ¢â‚¬â„¢s demand of calling upon Appellant-Zee to

pay an amount of over Rs.83 crores, being the aggregate principal amount allegedly owed by Respondent No.2 to the Respondent No.1-bank, was

based on a misconceived reading of the DSRA Guarantee Agreement.

REJOINDER ARGUMENTS

27. In rejoinder, Dr. Abhishek Manu Singhvi, learned Senior Advocate submitted that it was wrong for the Appellant-Zee to contend that terms of the

DSRA Guarantee Agreement made it a limited guarantee. According to him, Clauses of the Agreement clearly reflected to the contrary, more

particularly, recital 2, clauses 2, 6, 7, 9, 11, 20 and 24. He stated that reading of the said recital and the clauses make it abundantly clear that the

Guarantor/Appellant-Zee had confirmed and agreed that in the event of failure or default of the borrower in repayment of any single installment

amount or other interests, charges etc. in relation to the loan agreement and other documents, the amount shall be adjusted from the DSRA and the

Borrower shall immediately replenish the balance. Further, in case the Borrower was unable to maintain the credit balance, as required in recital 2, the

Guarantor guaranteed to replenish the DSRA immediately so as to ensure that the balance requirement is maintained at all times. According to him,

the Guarantor also confirmed and agreed that in the event of failure of the Borrower the lender shall be at liberty to invoke the guarantee and recover

the amount due from the Borrower, from the Guarantor. He stated that in view of the aforesaid clauses, Appellant-Zee had expressly undertaken to

bear the financial risk of maintaining the DSRA Account till the entire amount of loan was repaid by Respondent No.2 as well as to pay the entire

amount in case of default by Respondent No.2. He also pointed out that by communications dated 02nd March, 2020, 05th March, 2020 and 01st April,

2020, Appellant-Zee was forewarned that in case the default of Respondent No.2 continues, the balance required to be maintained in the DSRA

Account shall stand enhanced.

COURTÃ¢â‚¬â„¢S REASONING

PRELIMINARY OBJECTION RAISED BY THE APPELLATE-ZEE IS UNTENABLE IN LAW.

28. Having heard learned senior counsel for the parties, this Court is of the view that the clarification application as to whether the order dated 03rd

December, 2021 intended to restrain Respondent No.1-bank from exercising its rights under IBC is not in the nature of a review. In fact, the present

application has been filed in accordance with liberty granted to the parties to approach the Court if the need arises. Consequently, the preliminary

objection raised by the Appellate-Zee is untenable in law.

WHILE ORDER DATED 25th FEBRUARY, 2021 ONLY RESTRAINS THE RESPONDENT NO.1-BANK FROM INITIATING COERCIVE STEPS

AGAINST APPELLANT-ZEE, THE MODIFIED ORDER DATED 3rd DECEMBER, 2021 PERMITS THE RESPONDENT NO.1-BANK TO FILE

RECOVERY PROCEEDING. ASSUMING THAT IBC PROCEEDING INITIATED BY RESPONDENT NO.1-BANK IS NOT A RECOVERY

PROCEEDING, THIS COURT IS OF THE VIEW THAT IBC PROCEEDING IS NOT COERCIVE.

29. This Court is of the view that every individual has a right to file any legal proceeding till specifically prohibited by law or by a stay/injunction order

granted by a competent Court.

30. In the present case, the Appellant-Zee is seeking to restrain the respondent No.1-bank from initiating IBC proceeding on the strength of the order

dated 03rd December, 2021 passed by the learned predecessor Division Bench. However, the order dated 03rd December, 2021 modified the earlier

restraint order dated 25th February, 2021 and permitted the Respondent No.1-bank to file recovery proceeding.

31. Therefore assuming that IBC proceeding initiated by Respondent No.1Ã, bank is not a recovery proceeding, one will have to examine if IBC

proceeding initiated by Respondent No.1-bank is violative of order dated 25th February, 2021.

32. In the opinion of this Court, order dated 25th February, 2021 only restrains the Respondent No.1-bank from initiating coercive steps against

Appellant-Zee.

It is settled law that IBC proceeding is neither coercive nor adversarial to the interest of corporate debtor and guarantor. The Supreme Court in Swiss

Ribbons Private Limited & Anr. Vs. Union of India & Ors., (2019) 4 SCC 17, has held as under:Ã‚â€‹

Ã¢â‚¬Å“28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by

protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial

legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the

corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the

resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is

in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The

timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also

protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management

can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.Ã¢â‚¬â€‹

(emphasis supplied)

33. In Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy & Anr (supra) the Supreme Court has held as under:Ã‚â€‹

Ã¢â‚¬Å“83.Unlike coercive recovery litigation, the corporate insolvency resolution process under the IBC is not adversarial to the interests of

the corporate debtor, as observed by this Court in Swiss Ribbons (P) Ltd. v. Union of India [Swiss Ribbons (P) Ltd. v. Union of India].

84. On the other hand, the IBC is a beneficial legislation for equal treatment of all creditors of the corporate debtor, as also the protection

of the livelihoods of its employees/workers, by revival of the corporate debtor through the entrepreneurial skills of persons other than those

in its management, who failed to clear the dues of the corporate debtor to its creditors. It only segregates the interests of the corporate

debtor from those of its promoters/persons in management.Ã¢â‚¬â€‹

(emphasis supplied)

34. Consequently, initiation of IBC proceeding by Respondent No.1-bank does not constitute a coercive step against the Appellant-Zee and is

therefore not prohibited by virtue of the orders dated 25th February, 2021 and 03rd December, 2021 passed by this Court.

THE TERM Ã¢â‚¬Ëœ RECOVERY Ã¢â‚¬â„¢ USED IN THE ORDER DATED 3rd DECEMBER, 2021 IS A GENERIC TERM TO INCLUDE ANY OR ALL

LEGAL REMEDIES AVAILABLE TO THE RESPONDENT NO.1-BANK UNDER APPLICABLE LAWS TO REALISE THE AMOUNT DUE TO IT.

35. This Court is in agreement with the submission of Dr. Singhvi that the term Ã¢â‚¬Ëœ recovery Ã¢â‚¬â„¢ used in the order dated 03rd December, 2021 is a

generic term to include any or all legal remedies available to the Respondent No.1-bank under applicable laws to realise the amount due to it. After all,

the ultimate object of IBC is resolution of insolvency, where commencement of insolvency is determined by occurrence of a payment default and the

resolution is achieved through recovery of dues of financial creditors from the proceeds of resolution.

THIS COURT IN VIEW OF SECTION 41(b) OF SRA HAS GRAVE DOUBTS WITH REGARD TO MAINTAINABILITY OF THE SUIT FILED BY

THE APPELLANT-ZEE

36. This Court is also of the view that as a lender, Respondent No.1-bank has a legal right to proceed against a Guarantor, which in this case is the

Appellant- Zee, in an appropriate court of law. This legal right to proceed against a Guarantor before various judicial forums, would include the NCLT

under IBC. Section 41(b) of SRA clearly provides that no injunction can be granted to restrain any person from instituting or prosecuting any

proceedings in a Court not subordinate to that from which the injunction is sought. The Supreme Court in Cotton Corporation of India Limited v.

United Industrial Bank Limited and Others, (1983) 4 SCC 625 has held:

Ã¢â‚¬Å“9. Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ordinarily a preventive relief by way of prohibitory injunction cannot be granted by a court with a view to restraining any

person from instituting or prosecuting any proceeding and this is subject to one exception enacted in larger public interest, namely, a

superior court can injunct a person from instituting or prosecuting an action in a subordinate court with a view to regulating the

proceeding before the subordinate courts. At any rate the court is precluded by a statutory provision from granting an injunction

restraining a person from instituting or prosecuting a proceeding in a Court of coordinate jurisdiction or superior jurisdiction. There is an

unresolved controversy whether a court can grant an injunction against a person from instituting or prosecuting a proceeding before itself

but that is not relevant in the present circumstances and we do not propose to enlarge the area of controversy.Ã¢â‚¬â€‹

(emphasis supplied)

37. Consequently, this Court in view of section 41(b) of SRA has grave doubts with regard to maintainability of the suit filed by the Appellant-Zee.

38. Further, it is a settled proposition of law that no interim injunction can be granted where permanent injunction cannot be granted. Accordingly, this

Court is of the prima facie opinion that the learned Single Judge rightly held that if the interim injunction was to be granted it would debilitate the

Respondent No.1Ã‚â€‹bankÃ¢â‚¬â„¢s ability to take recourse to remedies which are available to it in law.

THE APPELLANT-ZEE IN ITS APPLICATION FOR STAY BEFORE THIS COURT AND THE APPLICATION SEEKING INTERIM

INJUNCTION FILED BEFORE THE LEARNED SINGLE JUDGE HAD PRAYED FOR A RESTRAINT FROM INITIATING Ã¢â‚¬Ëœ RECOVERY

PROCEEDINGSÃ¢â‚¬â„¢ ONLY. IF THE APPELLANT-ZEEÃ¢â‚¬â„¢S INTERPRETATION SOUGHT TO BE PLACED NOW ON THE TERM

RECOVERY IS TO BE ACCEPTED, THEN THERE IS NO ORDER RESTRAINING THE RESPONDENT NO.1-BANK FROM INITIATING IBC

PROCEEDINGS.

39. Lastly, the Appellant-Zee in its application for stay and the application seeking interim injunction filed before the learned Single Judge never sought

any relief to restrain Respondent No.1-bank from initiating IBC proceedings and had prayed for a restraint from initiating Ã¢â‚¬Ëœrecovery

proceedingsÃ¢â‚¬â„¢ only, which is evident from the prayers in the applications. Viewed from this perspective, if the Appellant-ZeeÃ¢â‚¬â„¢s interpretation

sought to be placed now on the term recovery is to be accepted, then in any event the orders dated 25th February, 2021 and 03rd December, 2021 do

not prohibit Respondent No.1-bank from initiating IBC proceedings. Further, the issue as to whether there has been a default of Appellant-Zee under

DSRA Guarantee Agreement is a question that shall be examined by the NCLT while adjudicating Section 7 application filed by Respondent No.1-

bank and cannot be prejudged and/or adjudicated by this Court, at this stage.

RELIEF

40. Consequently, it is clarified that this Court never prohibited Respondent No.1-bank from initiating or maintaining proceedings under the IBC against

the Appellant-Zee. Accordingly, there is no disobedience or violation of this CourtÃ¢â‚¬â„¢s orders dated 25th February, 2021 and 3rd December, 2021

and the contempt petition being Cont. Cas.(C)No.286/2022 is without any merit.

41. With the aforesaid clarification, CM Appl. 12152/2022 stands disposed of and Cont. Cas.(C) No.286/2022 stands dismissed.