IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION (L) NO.3405 OF 2024
IN
COMM. SUIT (L) NO.3324 OF 2024

Deepen Arun Parekh … Applicant/Plaintiff
versus
Indian Overseas Bank and Ors. … Defendants

Mr. Zal Andhyarujina, Senior Advocate with Mr. Simil Purohit, Senior Advocate with Ms. Akansha Agarwal, Mr. Ishvendra Tiwari i/by Sonal Doshi and Co., for Applicant/Plaintiff.
Mr. Amrut Joshi with Ms. Kajal Gupta, Ms.Shweta Singh, Mr. Yazad Udwadia, Ms. Purvi Jain, Mr. Bhavesh Wadhwani i/by M.V.Kini and Co., for Defendant Nos.1, 5 and 12.
Mr. Anant Bamne i/by M/s. A.R.Bamne and Co., for Defendant No.3.
Mrs. Rathina Maravarman (through VC) for Defendant Nos.4 and 6.
Mr. Nikhil Rajani with Mr. Sheyansh Desai i/by M/s. V. Deshpande and Co., for Defendant No.9.
Mr. Fraser Mario Alexander for Defendant No.10.
Mr. Benny Joseph with Ms. Pallavi Kamath, Mr. Sameer Solanki i/by BJ Law Officers LLP for Defendant No.15.
Mr. Indrajeet Deshmukh i/by Vidhii Partners, for Defendant No.17.

CORAM : N.J.JAMADAR, J.
RESERVED ON : 23 SEPTEMBER 2024
PRONOUNCED ON : 14 DECEMBER 2024

ORDER :

1. The Plaintiff has preferred this application for interim reliefs in the nature of stay to the effect and implementation of the Deed of Guarantee dated 10 April 2014 qua the Plaintiff and also to restrain the Defendants, their assigns, agents or persons claiming under them from acting upon in any manner, directly or indirectly, in furtherance of the Deed of Guarantee dated

10 April 2014 against the Applicant/Plaintiff.

2. The instant suit is instituted seeking an order and decree declaring that the Deed of Guarantee dated 10 April 2014 executed by the Plaintiff in favour of the Defendants has not come into force and is not valid and/or binding contract/instrument, and, in the alternative, it has ceased to have effect and stands automatically terminated, and, accordingly, is voidable and has been avoided by the Plaintiff.

3. Shorn of superfluities, the Plaintiff's case can be stated as under :

3.1 Parekh Aluminex Limited ('the Company') was one of the largest manufacturers of Aluminium Foil Containers, Aluminium Foil Roll and Aluminium Lids, in India. Amitabh Arun Parekh, brother of the Plaintiff, was the Chairman and Managing Director of the Company. The Plaintiff is a financial consultant and mutual funds distributor. Defendant Nos.1 to 18 are the banks and/or financial institutions, who had extended certain loans/financial assistance to the Company.

3.2 On 6 January 2013, Amitabh Parekh suddenly passed away at the age of 39 years. The Company then owed a liability of Rs.2762.09 Crores towards the loans and financial assistance availed from the Defendants; the consortium of lenders led by Indian Overseas Bank – Defendant No.1. On account of the untimely demise of Amitabh Parekh, the management and financial affairs of the Company were severely affected.

3.3 The Plaintiff avers, the consortium of lenders started exerting pressure on the family members of late Amitabh Parekh to take over the management of the Company and join the Board of Directors and also provide a personal guarantee. The Defendants proposed the restructuring of the debt of the Company under the Corporate Debt Restructure Scheme (CDR Scheme). As a pre-requisite for CDR, it was informed that one of the family members of late Amitabh Parekh, must become a director of the Company and also furnish personal guarantee. As the parents of late Amitabh Parekh were senior citizens and his widow was young, with responsibility of young children, the Plaintiff was made to join the Board of Directors of the said Company.

3.4 Accordingly, on 11 September 2013, the Plaintiff came to be appointed as an independent and non-executive Director of the Company. Three nominees, who were the representatives of Defendant Nos.1, 4 and 12, respectively, were also appointed as the Directors of the Company. However, appointment of the Plaintiff as Director of the Company was with an express understanding that the Plaintiff would not be responsible and/or liable for any act of the Company prior to his appointment as Director. An announcement uploaded on BSE on 11 April 2014 explicitly records the said condition.

3.5 The Plaintiff, thus, avers a limited and conditional Deed of Guarantee dated 10 April 2014 came to be executed. The Deed of Guarantee dated 10 April 2024 categorically provided that the Plaintiff was providing

guarantee in order to comply with the conditions laid down by the CDR Cell with a view to implement the CDR package in respect of the Company. Series of meetings took place between the Company and the CDR Cell. Eventually, vide letter dated 23 March 2016, CDR Cell informed the Defendants that the CDR-EG had, in its meeting held on 22 February 2016, decided that the company stood exited from the CDR mechanism as a failure. Upon being appraised that CDR did not fructify, the Plaintiff tendered his resignation from the Company with effect from 28 April 2016, and, it was accepted by the then Board of Directors of the Company as well as the Defendants without any demur.

3.6 The Plaintiff asserts, despite the aforesaid clear understanding regarding the role and status of the Plaintiff, many of the Defendants in the proceedings instituted in respect of the loans and financial facilities extended to the Company, made the Plaintiff a party to the proceedings in his capacity as personal guarantor, and, in some cases, as the heir of late Amitabh Parekh unjustifiably. The Plaintiff being the brother of late Amitabh Parekh, does not fall in the category of Class I heirs of Amitabh. Nor the Plaintiff has inherited any property from the estate of late Amitabh Parekh.

3.7 With reference to the covenants in the Deed of Guarantee, the Plaintiff asserts, the Deed of Guarantee did not become effective and operational as it was to come into force only upon sanction of the CDR plan

under the CDR Scheme. Secondly, the events referred to in Clause 12 of the Deed of Guarantee, upon happening of which the Deed of Guarantee was to cease to operate, did happen, namely, the Plaintiff ceased to be a member of the Board of Directors; the CDR became inoperative and/or could not be acted upon (Clause d); bankruptcy and insolvency of the Company (clause e) and the Defendants - the lenders of the Company - walked out of the CDR (clause c).

3.8 Thus, on the one hand, the Deed of Guarantee never came into effect, and, on the other hand, on account of the events which transpired subsequent to the Deed of Guarantee, it also ceased to operate. In these circumstances, according to the Plaintiff, the Defendants cannot rely upon the Deed of Guarantee for the recovery of the loan amount due and payable by the Company. Yet the Defendants have unnecessarily and maliciously impleaded the Plaintiff as a party to a spate of proceedings initiated by the Defendants forcing the Plaintiff to defend those proceedings at a huge personal and financial costs. Hence, this Suit.

4. In the instant application, it is, inter alia, averred that the Plaintiff has a strong prima facie case. The Plaintiff has raised issue of non-existence of Deed of Guarantee before the Tribunals in which proceedings have been initiated. However, till date the Tribunals have not adjudicated the grievances of the Applicant/Plaintiff. The Plaintiff is, thus, left in a precarious position. It

is, therefore, necessary to grant interim reliefs, lest the Plaintiff would suffer an irreparable loss.

5. Affidavits in reply are filed on behalf of Punjab National Bank – Defendant No.5, Dhanlaxmi Bank Ltd. - Defendant No.10 and Federal Bank Ltd. - Defendant No.15. Written submissions were also filed on behalf of Defendant Nos.4 and 6.

6. By and large, the resistance put forth by the Defendants by way of Affidavits in Reply and the written submissions proceeds on similar lines. The Defendants have assailed the tenability of the suit before this Court on multiple counts. First, the suit is barred by the law of limitation. The Deed of Guarantee in question was executed on 10 April 2014. The Plaintiff resigned from the Company on 28 April 2016. Original Applications/proceedings for recovery of the amount were instituted by the banks and financial institutions since the year 2016. Therefore, the instant Suit for declaration, which came to be filed in the year 2024, is ex-facie barred by the law of limitation.

7. Secondly, the Defendants contend, there is an express bar for institution of the suit of the present nature before the Civil Court under the provisions of Sections 34 and 35 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002),Section 18 of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act, 1993) and Section 180 of the Insolvency and Bankruptcy Code,

2016. The Defendants, thus, contend as the suit ex-facie appears to be barred by the provisions of law, the plaint itself deserves to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

8. Thirdly, the Plaintiff had participated in some of the Original Applications/proceedings instituted by the Defendants – Banks / financial institutions before the DRT. In few of the matters, the Plaintiff did not even file written statement. DRT is the appropriate forum before which the Plaintiff ought to have raised the grievances regarding the unenforceability of the Deed of Guarantee. The Plaintiff having failed to raise the said ground before the DRT, is trying to cover up the lacuna by instituting this Suit, belatedly. On this ground also, the instant application deserves to be rejected.

9. It was further contended that a bald contention of the Plaintiff that the Tribunals have not adjudicated upon the grievances of the Plaintiff till date, does not furnish a ground to entertain the instant suit. On the contrary, it implies that the proceedings are pending before the competent Tribunals having jurisdiction to decide all the issues. Therefore, the Plaintiff would be required to work out his remedies before the Tribunals.

10. The Defendants have controverted the contention of the Plaintiff that the Deed of Guarantee is not enforceable. It is, inter alia, asserted that the Deed of Guarantee was executed on 10 April 2014 and the CDR failure report was notified on 23 March 2016. The Plaintiff is, thus, liable for the period he

was on the Board of Directors of the Company. The Defendants have denied that the Plaintiff, in particular, and the family of late Amitabh Parekh, in general, were coerced to join the Board of Directors and execute the Deed of Guarantee. Referring to Clause 11 of the Deed of Guarantee, it is contended that the Plaintiff cannot be permitted to wriggle out of the liability. The Deed of Guarantee is, thus, valid, enforceable and subsisting document.

11. In the backdrop of the aforesaid pleadings, I have heard Mr. Zal Andhyarujina, learned Senior Advocate, for the Applicant-Plaintiff, Mr. Amrut Joshi, learned Counsel for Defendant Nos.1, 5 and 12, Mr. Anant Bamne, learned Counsel for Defendant No.3, Mrs. Rathina Maravarman, learned Counsel for Defendant Nos.4 and 6, Mr. Nikhil Rajani, learned Counsel for Defendant No.9, Mr. Fraser M. Alexander, learned Counsel for Defendant No.10, Mr. Benny Joseph, learned Counsel for Defendant No.15 and Mr. Indrajeet Deshmukh, learned Counsel for Defendant No.17 at some length. The learned Counsel took the Court through the pleadings, documents and the material on record.

12. Mr. Zal Andhyarujina, learned Senior Advocate, for the Applicant-Plaintiff submitted that, there is an absolute clarity on the facts with regard to the management of the company during the lifetime of late Amitabh Parekh and the role of the Plaintiff, after the demise of late Amitabh Parekh. The Plaintiff was not at all concerned with the Company during the lifetime of

Amitabh Parekh. The applicant entered the frame, only pursuant to the Deed of Guarantee executed as a pre-requisite for CDR. Indisputably, the Corporate Debt Reconstructing did not fructify as CDR failure report came to be notified.

13. Mr. Andhyarujina, thus, submitted that the Plaintiff's case would stand or fall by the terms of the Deed of Guarantee. Taking the Court through the Deed of Guarantee, especially clause 12 thereof, Mr. Andhyarujina strenuously submitted that the sanction of CDR package by the CDR EG was the pre-condition for the guarantee to come into effect. As the CDR was not sanctioned, the guarantee did not become effective and operational.

14. Secondly, the failure report under CDR scheme also rendered the guarantee unenforceable (even if it is assumed that it came into force), as sub-clauses (a), (c) and (e) of clause 12 triggered in. Incontrovertibly, the Plaintiff, upon being informed about the failure of CDR, resigned on 28 April 2016, and, thereby, ceased to be a member of the Board of Directors. CDR failed as lenders backed out. On the own showing of the Defendants, Insolvency Petition was admitted. All these events, coupled with the express term of Clause 12 and the recitals in clauses D, I, J, K and L, make it beyond the cavil that the Deed of Guarantee never became effective.

15. Mr. Andhyarujina would further urge that having realized that the Defendants have no case on merits, all the Defendants have tried to raise technical objections on the aspect of limitation and bar of jurisdiction. It was

submitted that, it is well recognized that the limitation is a mixed question of facts and law and can never be decided at the threshold. Therefore, the contention on behalf of the Defendants that the suit is barred by limitation, or for that matter, the plaint deserves to be rejected under Order VII Rule 11 of the Code, 1908, does not merit countenance. Strong reliance was placed on a three Judge Bench decision of the Supreme Court in the case of **Nusli Neville Wadia V/s. Ivory Properties and Ors.**[1]

16. Mr. Andhyarujina submitted that the challenge to the tenability of the instant suit on the count of the alleged bar under Section 18 of the RDB Act, 1993 is misconceived as the bar is restricted to the application by the banks and financial institutions in relation to matters specified in Section 17 of the said Act. There is no bar to the institution of a suit by the borrower before the civil Court. The decision of the Supreme Court in the case of **Bank of Rajasthan Ltd. v/s. VCK Shares and Stock Broking Services Ltd**.[2] constitutes a complete answer to the bogie of bar of jurisdiction sought to be raised on behalf of the Defendants.

17. Mr. Andhyarujina further submitted that the contention of the Applicant-Plaintiff that the Deed of Guarantee has not become operational found imprimatur in an order dated 21 February 2024 passed by the NCLT, Mumbai Bench in IA No.5501 of 2023 in CP(IB)/420(MB) 2022 instituted by the Central

1 (2020) 6 SCC 557
2 (2023) 1 SCC 1

Bank of India – Defendant No.6, wherein NCLT has observed in clear and explicit terms that the contingency of CDR package being approved did not happen, and, resultantly, the Deed of Guarantee never came into force. The said order is assailed by the Defendant No.6 before NCLAT. Once the Insolvency Petition is admitted by NCLAT, the Plaintiff would suffer an irreparable loss as the Plaintiff will have to cross the hurdle of moratorium. It is, therefore, necessary to restrain the Defendants from acting upon the Deed of Guarantee, which is non-est in the eye of law.

18. Mr. Amrut Joshi, learned Counsel for Defendant Nos.1, 5 and 12 led the submissions in opposition to the grant of interim reliefs. At the outset, Mr. Joshi submitted that the Plaintiff has resorted to the device of clever drafting and has sought declaratory reliefs to disguise the real nature of the Plaintiff's claim. In effect, the Plaintiff desires to put hindrances in the recovery of the amount due and payable to the banks and financial institutions and covered by the applications/proceedings already filed by the banks and financial institutions before the DRT. The instant suit is squarely in relation to matters covered by Section 17 of the RDB Act, 1993, and, thus, the bar under Section 18 operates with full force and vigor.

19. Secondly, Mr. Joshi would urge, the suit is clearly barred by the law of limitation. Under Article 58 and 59 of Schedule I of the Limitation Act, 1963, the period of limitation for a declaratory decree is three years. The instant suit

came to be instituted after eight years of the CDR failure report. In fact, the Defendants have instituted applications before the Tribunals since the year 2016. Therefore, the suit being hopelessly barred by limitation, the plaint itself is liable to be rejected under Order VII Rule 11 of the Code, 1908.

20. Mr. Joshi urged with a degree of vehemence that, it is not necessary that the Defendants shall move the Court for rejection of the plaint by filing an application. In the case at hand, the Defendants have specifically raised the ground that the plaint is liable to be rejected under Order VII Rule 11 of the Code. By a catena of decisions, according to Mr. Joshi, it is now well settled that the plaint can be rejected by invoking the powers under Order VII Rule 11 where it appears to be barred by any provision of law, including law of limitation, ex-facie.

21. To buttress this submission, Mr. Joshi placed a strong reliance on the decisions of the Supreme Court in the cases of **Popat and Kotecha Property V/s. State Bank of India Staff Association**[3], **Dahiben V/s. Arvindbhai Kalyaniji Bhanusali (Gajra) and Ors.**[4] and **Raghwendra Sharan Singh V/s. Ram Prasanna Singh**[5].

22. As a second limb of the aforesaid submission, Mr. Joshi urged that the delay also precludes the Plaintiff from claiming equitable relief of injunction. In fact, the Plaintiff has appeared before the Tribunals. The Plaintiff can very

3 (2005) 7 SCC 510
4 (2020) 7 SCC 366
5 (2020) 16 SCC 601

well raise the grievances sought to be raised in this suit, in the pending proceedings before the Tribunals.

23. Mrs. Maravarman, learned Counsel for Defendant Nos.4 and 6 supplemented the submissions of Mr. Joshi. Emphasis was laid on the fact that the Defendant Banks have invoked the guarantee in the year 2014-15. Proceedings have been filed before the DRT since the year 2016. In none of the matters, the Plaintiff has filed written statement. Thus, the bar of limitation as well as bar under Section 18 of the RDB Act, 1993 came into play. An endeavour was also made to urge that the moratorium under Sections 96 as well as 101 of the IBC, 2016 also operates.

24. Learned Counsel for rest of the Defendants adopted the submissions of Mr. Joshi and Mrs. Maravarman and reiterated the resistance on the count of bar of limitation, jurisdiction and delay and laches.

25. I have given anxious consideration to the aforesaid submissions canvassed across the bar. The core controversy, as is evident, revolves around the enforceability of the Deed of Guarantee as against the Plaintiff. The aspects of statutory bar to the reliefs sought by the Plaintiff are interwoven with the core controversy.

26. To start with, there does not appear much controversy over the facts upto the stage of failure of CDR proposal. Though, there are averments in the plaint and the application to the effect that the family members of late Amitabh

Parekh were coerced into agreeing for CDR and furnishing personal guarantee and joining the Board of Directors, yet, for the purpose of determination of this application, the Court, at this stage, need not delve deep into that aspect of the matter.

27. Broadly admitted facts are : Late Amitabh Parekh was the Chairman and Managing Director of the Company. Substantial loans and financial facilities were extended to the Company by the consortium of lenders – Defendant Nos.1 to 18. Amitabh Parekh passed away on 6 January 2013. A proposal to restructure the debt was moved and, for that purpose, one of the family members was to be taken on the Board of Directors of the Company. The Plaintiff joined the Board of Directors of the Company with effect from 11 September 2013. A Deed of Guarantee came to be executed on 10 April 2014. Eventually, the Company exited from CDR as resolved in CDR EG in its meeting dated 22 February 2016. The Plaintiff resigned from the Board of Directors of the Company with effect from 28 April 2016.

28. The controversy between the parties essentially revolves around the question as to whether the personal guarantee became effective. Reference to few of the recitals and clauses of the Deed of Guarantee is necessary for the determination of the controversy in a proper perspective. Recitals (I), (J), (K) and (L) and Clauses 1 and 12 of the Deed of Guarantee are material, and, hence, extracted below :

"I. And Whereas while pursuing for CDR for restructuring of the Borrower's debt, the Lenders also requested the family of late Mr. Amitabh Parekh to get Involved in the functioning of the Borrower so as to ensure the smooth operations of the Borrower and protection of interest of all the stakeholders including the Lenders.

J. And Whereas at the specific request and instance of the Lenders as also as per the directions of CDR EG, and in compliance of the terms of LOA, Mr. Deepen Parekh has been appointed as Independent Director of the Borrower.

K. And Whereas as one of the conditions of the loans granted by the Lenders, late Mr. Amitabh Parekh had executed his personal guarantee in favour of the Lenders, which by virtue of his demise has ceased to have effect and the Lenders have requested the Guarantor to execute his personal guarantee in terms hereof in order to comply with the conditions laid down by CDR Cell without which the implement the CDR package would not have been possible.

L. And Whereas it is confirmed by the Lenders that the personal guarantee of the Guarantor will be effective if and only, if the CDR package sanctioned by the CDR EG has been implemented in full and totality in terms of the LOA issued and the same shall cease to have effect on happening or occurrence of certain events as detailed in this Deed of Guarantee and hence, this Guarantee given by Mr. Deepen Parekh in terms hereof shall be a conditional guarantee.

1. In consideration of the lenders agreeing to grant/granting and continuing to grant the said Facilities to the Borrower and subject to the other terms of this Deed of Guarantee and especially clauses (*) and (*), the Guarantor hereby guarantee to the Lenders, the performance by the Borrower of all the Borrower's obligations in and under the said credit facilities and the due repayment as surety to the Lenders and pay to the

Lenders the Principal sum (not exceeding Rs.2762.09 Crores (Rupees Two Thousand Seven Hundred Sixty-two Crores and Nine Lacs only) together with interest, costs, charges, expenses and/or other monies for the time being due to the Lenders in respect of or under the above mentioned Credit Facilities or any of them (the "Guaranteed Amounts") in the event of failure on the part of Borrower in payment of/repaying the same to the Lenders or otherwise upon the occurrence an event of default under the said Agreements of Loan. Provided that the aggregate amount recoverable from the Guarantor under this Guarantee shall not exceed the guaranteed amounts.

……..

12. It is agreed and understood by the Lenders that this Guarantee shall become effective, if and only, if the CDR package sanctioned by the CDR EG has been implemented in full and totality and signed by all lenders in terms of the LOA issued. It is further agreed and understood by the Lenders that this Guarantee shall cease to have effect and shall automatically terminate on happening of any of the following events :

a. The Guarantor ceasing to be a member of the Board of Directors of the Borrower for any reason whatsoever.

b. The Guarantor ceasing to have any knowledge regarding the day-to-day affairs of the Borrower and/or ceasing to be involved whether directly or indirectly in the day-to-day affairs of the Borrower.

c. Any of the Lenders walking out of the CDR and/or acting contrary to the terms of the CDR.

d. Due to any change in the policy of the Government because of which CDR become inoperative and/or cannot be acted upon.

e. liquidation, bankruptcy, insolvency, reference to BIFR, winding up, dissolution of the Borrower by any governmental

authority or the acquisition or nationalization of the Borrower;

……..

29. The aforesaid recitals make it abundantly clear that the lenders acknowledged that the Company was managed by late Amitabh Parekh single handedly and no other member of Parekh family had been involved in the affairs of the Company. CDR lenders requested the family of late Amitabh to get involved in the functioning of the Company. Pursuant to the request and directions of CDR EG and in compliance of LOA, the Plaintiff was appointed as an independent director of the Company. One of the conditions of CDR was that the guarantor has to execute a personal guarantee without which implementation of the CDR package was not possible. Lenders confirmed that the personal guarantee of the guarantor would be effective if and only if the CDR package was sanctioned by CDR EG and it was implemented in full.

30. Clause 12 of the Deed of Guarantee makes it explicitly clear that the guarantee was to become effective if and only if the CDR package sanctioned by CDR EG was implemented in full and signed by all the lenders in terms of the LOA. It was further agreed that the guarantee shall cease to have effect and automatically terminate on the happening of the events, enumerated in clauses (a) to (e).

31. It would be contextually relevant to note that, in the corporate announcement, it was categorically disclosed that as per the terms of the

Corporate Debt Restructure EG, the Plaintiff was appointed as a Director of the Company and as per the terms of the agreement, he was absolved of any liability of any nature arising out of any act or acts done prior to his appointment.

32. The aforesaid recitals and clauses in the Deed of Guarantee, on their plain reading, leave no manner of doubt that the guarantee was conditional. The condition being the CDR package sanctioned by CDR EG accepted by all the lenders. The communication dated 23 March 2016 addressed by the Corporate Debt Reconstructing Cell (Exhibit C) to the Indian Overseas Bank, the leader of consortium of lenders, records that the company stood exited from the CDR mechanism as failure, in terms of the decision taken at the meeting held on 22 February 2016.

33. Simultaneously, exclusion clauses triggered in. The Plaintiff resigned from the Board of Directors of the Company with effect from 28 April 2016. Sub-clause (c) of clause 12 also triggered in as non-approval of CDR implied that the lenders walked out of the CDR. By an order dated 7 October 2020 in CP No.1262 of 2017 passed by the NCLT, Mumbai Bench, the Corporate Debtor i.e. Parekh Aluminex Limited was directed to be liquidated in the manner laid down in Chapter III of the IBC. Resultantly, sub-clause (e) of Clause 12 also triggered in.

34. Even if the aspects as to whether the guarantee ceased to operate on

account of the happening of the events enumerated in clauses (a), (c) and (e) above, is considered to be a matter which is in the realm of adjudication, yet no such uncertainty seems to exist with regard to the very coming into force of the Deed of Guarantee. The recitals and covenants in the Deed of Guarantee make it abundantly clear that the sanction of CDR package by CDR EG and acceptance thereof by all the lenders, was a condition precedent for the guarantee to spring to life. As the CDR package was not approved, the Deed of Guarantee, prima facie, did not become operative.

35. With the aforesaid clarity on facts, the challenges to the instant action on the ground of statutory bar are required to be appreciated. Incontrovertibly, the lenders have instituted proceedings before the jurisdictional DRT. In the Chart (Exhibit F) appended to the Plaint, the Plaintiff has furnished particulars of 17 proceedings instituted before the DRT and one Company Petition i.e. CP No.420 of 2022 filed by the Central Bank of India before the NCLT, Mumbai. Those proceedings appear to have been instituted since the year 2016. Whether in view of the pendency of these proceedings before DRT, jurisdiction of this Court is ousted ?

36. Section 17 of the RDB Act, 1993 which governs the jurisdiction, powers and authority of Tribunals, reads as under :

> “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.

(1-A) 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;

(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.

(2-A) 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."

37. Section 18 of the RDB Act, 1993, which bars the jurisdiction of the Civil Court, reads as under :

"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 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."

38. Section 34 of the Act, 1993 gives overriding effect to the provisions of the RDB Act, 1993. It reads as under :

> "34. Act to have overriding effect. - (1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
>
> (2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Cooperations Act, 1951 (63 of 1951), The Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)."

39. On a plain reading of the aforesaid provisions, especially Section 17(1) of the RDB Act, 1993, the Tribunal constituted under the said Act, shall exclusively exercise jurisdiction, power and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. In clause (b) of Section 2 of RDB Act, 1993, "application" means an application made to a Tribunal under Section 19 of the Act.

40. Section 19, in turn, contains a fasciculus of provisions regulating the procedure of the Tribunal. Section 19 enables the Defendant to file a written statement of his defence including a claim for set-off under sub-section (6) or counter-claim under sub-section (8) of Section 19. It implies that if the bank or financial institution has made an application for recovery of its debts against the Defendant, the Tribunal would get jurisdiction to decide the claim for set-off under sub-section (6) of Section 19 or a counter claim under sub-Section (8) of Section 19. Sub-section (9) of Section 19 declares that the counter-claim shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim.

41. DRT is a creature of statute. It exercises jurisdiction within the province of authority conferred by the RDB Act, 1993. The bar under Section 18 of the Act, 1993 is, thus, required to be considered keeping in view this nature of jurisdiction exercised by the DRT. The bar under Section 18, thus, cannot be considered *de hors* the provisions contained in Section 17 and 19 of the RDB Act, 1993.

42. In this context, a three Judge Bench decision of the Supreme Court in the case of **Bank of Rajasthan Ltd. v/s. VCK Shares and Stock Broking Services Ltd. (supra)**, on which strong reliance was placed by Mr. Andhyarujina, illuminates the path. In the said case, the Supreme Court was

called upon to decide the following questions which were referred to the larger Bench in view of the cleavage of judicial opinion in the cases of **SBI V/s. Ranjan Chemicals Ltd.**[6], **United Bank of India V/s. Abhijit Tea Co.(P) Ltd.**[7], **Indian Bank V/s. ABS Marine Products (P) Ltd.**[8] and **Nahar Industrial Enterprises Ltd. V/s. Hong Kong and Shanghai Banking Corporation**[9] :

> "(a) Whether an independent suit filed by a borrower against a bank or financial institution, which has applied for recovery of its loan against the plaintiff under the RDB Act, is liable to be transferred and tried along with the application under the RDB Act, by DRT ?
>
> (b) If the answer is in the affirmative, can such transfer be ordered by a court only with the consent of the Plaintiff ?
>
> (c) Is the jurisdiction of a civil Court to try a suit filed by a borrower against a bank or financial institution ousted by virtue of the scheme of the RDB Act in relation to the proceedings for recovery of debt by a bank or financial institution ?"

43. After an elaborate analysis of the provisions of RDB Act, 1993, the Supreme Court enunciated that the jurisdiction of the civil court to try a suit filed by the borrower against the bank or financial institution is not ousted by virtue of the scheme of the RDB Act in relation to the proceedings for recovery of debt by a Bank or Financial Institution. While arriving at the aforesaid conclusion, the Supreme Court observed, inter alia, as under :

> "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

6 (2007) 1 SCC 97
7 (2000) 7 SCC 357
8 (2006) 5 SCC 72
9 (2009) 8 SCC 646

Code unless expressly or impliedly excluded. This was also reiterated by a Constitution Bench of this Court in Dhulabhai V/s. State of Madhya Pradesh.[10] 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/s. Ramesh Chander Agarwal[11] 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

10 (1968) 3 SCR 662
11 (2003) 6 SCC 220

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." (emphasis supplied)

44. The Supreme Court further clarified that the fact that the Defendant is entitled to institute a suit against the bank or financial institution before the civil court would not, however, entitle the Defendant to seek a stay on the decision of DRT awaiting the verdict of his suit before the civil court as it is a matter of his choice. The observations in paragraph Nos.53 and 54 make this position absolutely clear. They read as under :

"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."
>
> (emphasis supplied)

45. In view of the aforesaid enunciation of law, I find substance in the submission of Mr. Andhyarujina that, in the facts of the case, the bar under Section 18 of the RDB Act, 1993 is not prima facie attracted. The Plaintiff is entitled in law to seek declaration before the civil court that the Deed of Guarantee has not become effective and operational or otherwise does not bind him. The provisions contained in Section 18 of the RDB Act, 1993 do not preclude the Plaintiff from seeking such a declaration.

46. This propels me to the second challenge forcefully mounted on behalf of the Defendants that the suit is ex-facie barred by limitation, and, therefore, the plaint itself is liable to be rejected under the provisions of Order VII Rule 11 of the Code, 1908. A question whether while opposing interim relief, the Defendants can canvass a ground of rejection of the plaint under Order VII Rule 11 of the Code, especially without filing an application for the same, was sought to be agitated at the Bar

47. Mr. Andhyarujina made an endeavour to urge that the Plaintiff did not get an opportunity to meet the said contention. Had the Defendants sought rejection of the plaint by filing an appropriate application, the Plaintiff would have met the said challenge.

48. Mr. Joshi, learned Counsel for Defendant Nos.1, 5 and 12 joined the issue by canvassing a submission that, in the affidavits in reply, the Defendants have specifically raised the said ground, and, even otherwise, the Defendants can seek rejection of the plaint without filing written statement and/or an application seeking a specific prayer for rejection of the plaint.

49. Relevant part of the provisions contained in Order VII Rule 11 of the Code of Civil Procedure, 1908 reads as under :

> 11. Rejection of plaint. - The plaint shall be rejected in the following cases:-
>
> (a) ……
>
> (b) ……
>
> (c) …….
>
> (d) where the suit appears from the statement in the plaint to be barred by any law;

50. From the phraseology of the aforesaid provision, which empowers the Court to interdict the suit if the plaint does not disclose a cause of action or suit appears to be barred by any law, indicates that the said power can be exercised at any stage of the suit. It is not peremptory that the Defendant

must raise a ground either in written statement or by filing an independent application that the plaint is liable to be rejected. In a sense, a duty is cast on the Court to carefully examine the plaint and read the averments in the plaint in a meaningful manner, and, if upon such reading, the Court finds that an illusion of cause of action is created or the suit is otherwise, barred by any law, the Court can reject the plaint even without any intervention by the Defendant.

51. In the case of **Popat and Kotecha Property V/s. State Bank of India Staff Association (supra)**, the Supreme Court expounded the law in the following terms :

> "23. Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13."
>
> (emphasis supplied)

52. In the case of **Raghwendra Sharan Singh (supra)**, the Supreme Court again referred to the pronouncements governing the exercise of power under

Order VII Rule 11, and, after analyzing the facts, held that the plaint was required to be rejected for being barred by law of limitation. The observations in paragraphs 6.9 and 7 read as under :

> "6.9 In Ram Singh V/s. Gram Panchayat Mehal Kalan[12] this Court has observed and held that when the suit is barred by any law, the Plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.
>
> 7. ……...Therefore, considering the averments in the plaint and the bundles of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is bared by law of limitation. Therefore, considering the decisiosn of this Court in T. Arvandandam V/s. T.V.Satyapal[13] and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 CPC."

53. In the case of **Dahiben V/s. Arvindbhai Kalyaniji Bhanusali (Gajra) and Ors. (supra),** the Supreme Court emphasised the peremptory nature of the provisions contained in Order VII Rule 11 and upheld the order of rejection of the plaint where the suit appeared to be barred by limitation. The observations in paragraph 23.15, 29.19 and 29.20 read as under :

> "23.15 The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the Court finds that

12 (1986) 4 SCC 364
13 (1977) 4 SCC 467

> the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.
>
> 29.19 Reliance is placed on the recent judgment of this Court rendered in Raghwendra Sharan Singh V/s. Ram Prasanna Singh (supra), wherein this Court held held that the suit would be barred by limitation under Article 59 of the Limitation Act, if it was filed beyond three years of the execution of the registered deed.
>
> 29.20 The Plaintiffs have also prayed for cancellation of the subsequent sale deed dated 1 April 2013 executed by Respondent 1 in favour of Respondents 2 and 3; since the suit in respect of the first sale deed dated 2 July 2009 is rejected both under clauses (a) and (d) of Order 7 Rule 11, the prayer with respect to the second sale deed dated 1 April 2003 cannot be entertained."
>
> (emphasis supplied)

54. The aforesaid enunciation of law would indicate that the provisions of Order VII Rule 11 of CPC are of mandatory nature. The stage of the suit does not matter. The said power can be exercised by the Court, *de hors* any contention in the written statement or an application seeking rejection of the plaint. If the Court upon a meaningful reading of the plaint comes to the conclusion that the plaint does not disclose a cause of action or the suit is otherwise barred by any law, the Court is enjoined to pass an order of rejection of the plaint.

55. The submission of Mr. Zal Andhyarujina that the Plaintiff did not get adequate opportunity to meet the case for rejection of the plaint urged before the Court, cannot be countenanced as the determination has to be made on

the basis of the averments in the plaint itself and nothing more.

56. In the light of the aforesaid position in law, re-adverting to the facts of the case, the bar of limitation was premised on the fact that the Defendant-Banks had started enforcing the guarantee by instituting proceedings since the year 2016.

57. In paragraph No.34 of the plaint, the Plaintiff has referred to the proceedings initiated by the banks tabulated in Exhibit F. From the perusal of the said table (Exhibit F), it appears that , in the year 2016, as many as six proceedings were filed by the banks before the DRT, Mumbai. In this context, the Plaintiff seeks a declaration that the Deed of Guarantee dated 10 April 2014 executed in favour of the Defendants has not come into force and is not valid and/or binding contract/instrument, and, in the alternative, declare that the said Deed of Guarantee has ceased to have effect and stood terminated and has been avoided and a further order for the said instrument to be delivered up and cancelled.

58. In the Limitation Act, 1963, for a suit for declaration, not covered by Articles 56 and 57, under Article 58 the period of limitation is three years and the time begins to run when the right to sue first accrues. Under Article 59, the period of limitation to cancel or set aside an instrument is also three years and the time begins to run when the facts entitling the Plaintiff to have the instrument cancelled or set aside first become known to him.

59. The thrust of the submission on behalf of the Defendants was that the right to sue accrued in the year 2016. Thus, the suit is hopelessly barred by limitation.

60. A pivotal question that wrenches to the fore is, whether a declaration in respect of or an order for cancellation of the Deed of Guarantee in question is strictly warranted ?

61. As noted above, the recitals in the covenants in the Deed of Guarantee make it, prima facie, beyond contestation that the sanction of CDR package by CDR-EG and acceptance thereof by the lenders was peremptory to infuse life into the contract of guarantee. The non-approval of CDR package, prima facie, dismantled the very edifice on which the contract of guarantee could have been built. The deed of Guarantee, thus, did not come into force.

62. At this stage, a distinction is required to be drawn between the operability and enforceability of the contract. Prima facie, in the facts of the case, it appears that the contract of guarantee, sans approval of CDR by CDR-EG, did not come into existence and become operable. The challenge to the instrument is, thus, not on the count of non-enforceability of the contract, but to the very formation of the jural relationship on the basis of the said contract.

63. The moot question is, whether in such a situation the bar of limitation would be attracted. Can the Court on the basis of the plain terms of the Deed

of Guarantee and indubitable position that the CDR package was not sanctioned, enforce the terms of the Deed of Guarantee ?

64. In the face of the uncontroverted facts, prima facie, the Court may not enforce the Deed of Guarantee on its plain terms upon being apprised that the condition precedent has not been fulfilled. If the Deed of Guarantee is, prima facie, found to be an inoperative instrument, a declaration to that effect is not a must.

65. A useful reference in this context can be made to a Full Bench Judgment of the Nagpur High Court in the case of **Asaram V/s. Ludheshwar**[14] wherein with reference to the provisions of Section 38 of the Specific Relief Act, 1877 and Article 91 of the Limitation Act, 1908, Justice Bose observed that :

> "There is in my opinion a wide difference between an instrument which is voidable and one which is void from the beginning. In the former, the right under the contract continues until it is avoided and therefore restoration of property handed over in pursuance of it cannot be claimed until the instrument is avoided either by the act of parties or through the Court. In the latter no legal contract ever came into being and so the rights of the parties are determined independently of the deed. There is no need to avoid or cancel that which never existed in the eye of the law and so the substantial relief claimed would not be governed by Art. 91; 35 Cal 551 at pp. 559-560 and 10 NLR 133 at p. 136; nor can the mere addition of an ancillary relief for cancellation which need never have been claimed

14 AIR 1938 Nagpur 335

make difference : 50 ALL 510, 16 Mad 311 at p. 314 : see also 6 CLR 12 at p. 15, 25 ALL 1 at p. 16 and 25 Bom 337 at p. 350." (emphasis supplied)

66. In the case of **Gouri Amma Vaidehi Amma V/s. Parameshwaran Pillai Madhavan Pillai and Anr.**[15] the distinction between voidable documents on the one hand, and void documents, on the other, was highlighted and it was enunciated that there can be no doubt that Article 59 is applicable only in cases where it is necessary to have a document set aside. Whether the document will have to be set aside or not for the purpose of ensuring the rights of the Plaintiff bears upon the principle of substantive law and the distinction has always been maintained between voidable documents on the one hand and void documents on the other. The Court referred to an earlier decision in the case of **Appanna V/s. Venkatappadu**[16] and observed as under :

> "This distinction has been well brought out in the judgment of Justice T.L.Venkatarama Iyer in **Appanna V. Venkatappadu** (supra). Learned Single Judge first referred to **Patherpermal Chetty V/s. Maniandy Servai**[17] where the question for determination was whether a suit to recover properties which had been transferred by a person benami in the name of another was governed by Article 91 of the Limitation Act, and in holding that the Article had no application, the Privy Council observed :
>
> *"As to the point raised on the Indian limitation Act, 1877,*

15 AIR 1957 Travancore-Cochin 312
16 AIR 1953 Mad 611 (A)
17 ILR 35 Cal 551(B)

their Lordships are of the opinion that the conveyance of the 11th June 1895, being an inoperative instrument, as in effect, it has been found to be, does not bar the Plaintiff's right to recover possession of his land and that it is unnecessary for him for to have it set aside as a preliminary to his obtaining the relief he claims. The 144th and not the 91st article in the second schedule to the Act is therefore that which applies to the case and the suit has consequently been instituted in time." (emphasis supplied)

67. In the case of **Mulakalapalli Pulllayya V/s. Chalamala Guravayya**[18] the Andhra Pradesh High Court referred to the decision of the Privy Council in the case of **Patherpermal Chetty V/s. Maniandy Servai (supra),** and the decision of the Madras High Court in the case of **Appanna V/s. Venkatappadu (supra)**, and observed as under :

"13. The Article was considered by the Privy Council in Petherperumal Chetty V/s. Muniandy Servai (supra) where Their Lordships observed that "conveyance of 11th June 1985 being inoperative instrument, it is unnecessary to have it set aside as a preliminary to obtaining the relief claimed. In such cases, it is 144th Article and not the 91st Article is applicable. This Privy Council case was relied upon by the Madras High Court in Appanna V/s. Jami Venkatappadu (supra).

14. That was a case where the Plaintiff had That was a case where the plaintiff had executed a deed of settlement whereby she transferred all the suit properties to the 1st defendant and his brother by way of gift. It was that deed that was the subject - matter of attack by the plaintiff in the suit. The plaintiff alleged that the 1st defendant and his brother represented to her that the deed was a general power-of-

18 1967 Law Suit (AP) 161

attorney; that she did not read it nor was it read to her and that she executed it in the thought and belief that it was only a power - of - attorney. The deed of settlement was also attacked on the ground that it was executed by the plaintiff because of fraud and misrepresentation practised on her by the 1st defendant and his brother. The relief claimed was that the settlement deed be set aside and a decree for possession and mesne profits be awarded. While considering the application of article 91 of the limitation act their lordships observed that the answer to that question depended on the application of two principles, both well settled, that article 91 did not apply when the instrument sought to be cancelled was void and inoperative and that where a person executes a deed of one character under misrepresentation that it is of a different character, it was void. In para. 3 the learned judges say :

> "this article presupposes that a suit is necessary under the law to set aside the instrument. But, where under the law there is no duty cast on the person to get an instrument set aside, this article does not impose any obligation on him to get it set aside. We must, therefore, have recourse to the substantive law to ascertain whether a party to an instrument should get that cancelled or not. Now the authorities have established that for this purpose there is a d1stinction between voidable and void transactions and that while the former class of transactions should be set aside, the latter need not be."

68. In the light of the aforesaid position in law, as regards the necessity of declaration in the matter of the instruments which are inoperative or spent, the bar of limitation may not operate. Therefore, the submission on behalf of the Defendants that since the Deed of Guarantee was invoked and sought to be

enforced by the Defendants in the year 2016, the suit is ex-facie barred by limitation, and, consequently, the plaint is liable to be rejected at the threshold, may not deserve acceptance unreservedly.

69. This leads me to the nature of the relief which can be granted at the interim stage. As observed above, the Plaintiff has made out a strong prima facie case of the Deed of Guarantee not having become operative and the absence of jural relationship (which the Defendants assert on the strength of the said instrument.) The balance of convenience, if appraised in the light of the attendant circumstances of appointment of Plaintiff on the Board of Directors of Parekh Aluminex Limited with an express stipulation that he was not liable for the liabilities incurred by the said Company prior to his appointment, tilts in favour of the Plaintiff. Thus, if interim relief is not granted despite such a strong prima facie case and balance of convenience, the Plaintiff would suffer an irreparable loss.

70. At the same time, in view of the enunciation of law by the Supreme Court in the case of **Bank of Rajasthan Limited (supra)**, in a suit of the present nature, the Plaintiff, who has already been proceeded against before the DRT, cannot interdict those proceedings before the DRT under the RDB Act. The Supreme Court has made it explicitly clear that the claim Petition under RDB Act would continue to proceed in terms fo the procedure established therein, notwithstanding the nature of the relief claimed by the

borrower in an independent suit filed before the civil court.

71. In my considered view, the aforesaid two competing interest are required to be balanced. On the one hand, the interest of the Plaintiff who has made out a very strong *prima facie* case needs to be protected. On the other hand, the order passed by this Court should not have the effect of staying the proceedings which have been instituted against the Plaintiff by the banks before the DRT under the RDB Act or the proceedings before the Tribunals under the IBC, 2016. Such a fine balance can be achieved by making an interim declaration that the Deed of Guarantee has not become operative. Such a relief may not styme the proceedings before the Tribunals under the RDB Act and IBC 2016. The Tribunals may, however, take into account the interim declaration made by civil Court, while exercising their statutory jurisdiction.

72. Hence, the following order :

ORDER

(i) Interim Application stands partly allowed.

(ii) By way of interim relief, it is declared that the Deed of Guarantee dated 10 April 2014 has not become operative.

(iii) Costs in cause.

(N.J.JAMADAR, J.)