2024:BHC-OS:18434

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (LODG.) NO. 31055 OF 2024
IN
APPEAL NO. 597 OF 2016
IN
SUIT NO. 2295 OF 2002

Siti Networks Ltd.]
(formerly known as Siticable Network Ltd.)]
through Resolution Professional Rohit]
Ramesh Mehra]... Applicant

In the matter between :

Siti Networks Ltd.]
(formerly known as Siticable Network Ltd.)]...Appellant
through Resolution Professional Rohit] (Orig.
Ramesh Mehra Defendant)

Versus

Rajiv Suri, Adult, Indian Inhabitant]
carrying on his business in the name]
and style of M/s. Ambika Chitra as a]...Respondent
Proprietor thereof having his office at 15,](Orig. Plaintiff)
Golf Links, Khar, Mumbai – 400 052.

Mr. Saurabh Bachhawat *a/w. Mitesh Shah, Nishant Sogani, Rohan Gajaria, Ishaan Wakhloo, for Applicant.*

Mr. Ajit Anekar *a/w. Mr. Siddhant Sawhrey i/b Auris Legal, for Respondent.*

CORAM : B.P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.

Reserved on : October 18, 2024

Pronounced on : November 13, 2024.

Judgement : (*Per, Somasekhar Sundaresan J.*)

1. This is an Application filed by the Appellant not only seeking to withdraw Appeal No. 597 of 2016 but also seeking permission to withdraw the amount of Rs. 20,00,000/- that had been deposited in this Court pursuant to an interim order, along with accrued earnings thereon. For the reasons set out in this judgement, we have allowed such withdrawal of the Appeal, and of the deposited amounts along with earnings.

Factual Matrix:

2. The Applicant-Appellant is a "corporate debtor"[1] undergoing a Corporate Insolvency Resolution Process ("***CIRP***") under the Insolvency and Bankruptcy Code, 2016 ("***IBC***") since February 22, 2023. This Application has been filed at the behest of the Resolution Professional who is now in charge of running the affairs of the Applicant-Appellant under the oversight of the Committee of Creditors appointed under the IBC.

3. A quick overview of the following facts underlying the Appeal would be in order:-

[1] *Defined in Section 3(8) of the IBC as a corporate person who owes a debt to any person*

a) Suit No. 2295 of 2002 was disposed of by a learned Single Judge of this Court by a judgment dated June 13, 2016 ("***Impugned Judgment***"), with a direction to the Appellant to pay to the Respondent, a sum of Rs. 15,00,000/- by way of damages along with interest at the rate of 24% per annum, from the date of institution of the suit until the date of realization;

b) In Appeal No. 597 of 2016, challenging the Impugned Judgement, an interim order dated February 15, 2016 came to be passed, the operative part of which reads as follows :

> *2. **Appellants shall deposit Rs. 20 lakhs in this Court** and the balance amount shall be **secured** by giving **security** to the satisfaction of the Prothonotary & Senior Master.*
>
> ***[Emphasis Supplied]***

c) To cut a long story short, the amount of Rs. 20,00,000/- was deposited in cash with this Court on April 2, 2016. For the balance amount, bank guarantee was issued by IDBI Bank on April 6, 2016. The bank guarantee was extended from time to time. Owing to disputes between the Appellant and a consortium of nationalised banks, the Appellant sought leave of this Court to replace the bank guarantee with a guarantee issued by either ICICI Bank or HDFC Bank. A Division Bench of this Court on January 3,

2020, refused to permit the bank guarantee to be substituted by either of the aforesaid banks, and insisted that the bank guarantee should only be from a nationalised bank, failing which the decretal amount along with interest should be deposited with the Registry on or before January 18, 2020. This refusal to permit substitution of a bank guarantee from a non-nationalised bank, led to Special Leave Petition No. 807 of 2020 being filed in the Supreme Court;

d) By an order dated January 17, 2020, the Supreme Court permitted the furnishing of a bank guarantee by either ICICI Bank or HDFC Bank within a period of two weeks, which led to a bank guarantee from ICICI Bank being provided on January 27, 2020 ("***ICICI Guarantee***");

e) Two years later, the provisions of the IBC were invoked by Indusind Bank which led to an order dated February 22, 2023, being passed by the "Adjudicating Authority" i.e. the National Company Law Tribunal, Mumbai ("***NCLT***"), initiating the CIRP, and thereby triggering the moratorium under Section 14 of the IBC;

f) On February 22, 2023, one Mr. Rohit Ramesh Mehra came to be appointed as the Resolution Professional in respect of the Applicant-Appellant;

g) Ms. Shilpi Asthana, one of the then directors of the Appellant, filed an appeal before the National Company Law Appellate Tribunal, New Delhi ("***NCLAT***") challenging the initiation of the CIRP. By an order dated March 7, 2023, the NCLAT stayed the initiation of the CIRP, thereby suspending the moratorium;

h) Eventually, on August 10, 2023, the NCLAT dismissed the appeal, which led to the moratorium being reinstated;

i) Challenging the order of the NCLAT, Ms. Asthana filed Civil Appeal No. 5340 of 2023 in the Supreme Court, which was dismissed on September 1, 2023. Since that date, the Company is without doubt, under CIRP, and the moratorium is firmly in place;

j) Meanwhile, the ICICI Guarantee, scheduled to expire on January 6, 2024, was extended for one more year and is now scheduled to expire on January 6, 2025;

k) The Applicant-Appellant filed Interim Application No. 7569 of 2024 before the Supreme Court seeking withdrawal of the Special Leave Petition No. 807 of 2020. The premise of such Interim Application was that the CIRP being underway, with the attendant moratorium, there is no scope at all left for the guarantee

to be invoked since Section 14 of the IBC prohibits enforcement against any of the assets of a corporate debtor undergoing CIRP. It was submitted by the Applicant-Appellant to the Supreme Court that it is the duty of the Resolution Professional to take control and custody over all the assets of the corporate debtor, and the only option for the judgment creditor is to make his claims before the Committee of Creditors constituted under the IBC. It was submitted that the execution of a decree or judgment is explicitly prohibited under Section 14 of the IBC. Consequently, it was submitted, there was no question of renewing the bank guarantee, and it was prayed that the bank guarantee which was scheduled to expire on January 6, 2024 and had been extended for one more year, must be permitted to be withdrawn, along with liberty to withdraw the Special Leave Petition. The Applicant-Appellant gave an undertaking to also withdraw the present Appeal pending before this court against the Impugned Judgement;

l) The Respondent strongly opposed the aforesaid application before the Supreme Court, to resist the withdrawal of the Special Leave Petition and indeed, the revocation of the bank guarantee. The basis of the Respondent's opposition was that Section 14 of the IBC only prohibits proceedings ***against*** a corporate

debtor and has no implication whatsoever for proceedings filed ***by*** the corporate debtor. It was argued that it is the corporate debtor that has filed the present Appeal against the Impugned Judgement, and the petition in the Supreme Court against an order passed in the course of the present Appeal. The argument of the Respondent was that the bank guarantee and the amount covered by it are in a nature of "*custodia legis"* and the Appellant has no control over the same, which, according to the Respondent, meant that the bank guarantee is not an asset of the corporate debtor;

m) The Appellant filed a rejoinder before the Supreme Court stating that the bank guarantee furnished by the Appellant was not in the nature of a performance bank guarantee but was a financial guarantee, which falls within the definition of the term, "security interest" under the IBC. According to the Appellant, since the bank guarantee is a security interest for enforcement against the corporate debtor under CIRP, and its object is to secure performance of the Impugned Judgment, invoking the same would constitute enforcement against the corporate debtor, which would be in direct conflict with Section 14 of the IBC. According to the Appellant, Section 14 prohibits enforcement against the corporate debtor for recovery of any past dues incurred prior to the

commencement of the CIRP. Therefore, permitting the bank guarantee to be invoked, according to the Appellant, would lead to the Respondent stealing a march over other creditors, thereby vitiating the sequence of distribution of assets, should the CIRP fail and liquidation take place. Consequently, the Appellant, acting through the RP submitted that no useful purpose would be served in requiring the bank guarantee to be kept alive; and

n) Upon hearing the parties, the Supreme Court allowed Interim Application No. 7569 of 2024 seeking withdrawal of the Special Leave Petition and permitted the revocation of the ICICI Guarantee. The Supreme Court made the following Order:

> *I.A. No. 7569/2024, seeking withdrawal of the special leave petition, is allowed.* ***The special leave petition is dismissed as withdrawn.***
>
> *The* ***bank guarantee(s) will stand revoked.***
>
> *The* ***respondent, Rajiv Suri, will be entitled to enforce his rights in accordance with law****.*
>
> ***[Emphasis Supplied]***

Contentions of the Parties:

4. On the strength of the aforesaid development, the present Application before this Court seeks withdrawal of Appeal No. 597 of 2016 on identical grounds, and to seek release of the cash deposited in this

Court, being an asset owned by the corporate debtor. It is noteworthy that the Appellant had undertaken before the Supreme Court, that this Appeal would be withdrawn.

5. The claim of the Respondent has been adjudicated and crystallized in the Impugned Judgement. The obligation of the corporate debtor to pay the amount would also become final because the present Appeal is also being withdrawn. The bank guarantees have already been revoked and released in terms of the final declaration of the Supreme Court on that part of the security provided by the corporate debtor. The cash deposited in this Court, actually being an asset, it would form the subject matter of the resolution process. Resolution Plans, if any, approved under the IBC, would determine how much the Respondent would be paid in relation to its dues under the Impugned Judgement. If all attempts at resolution fail, such an asset would have to be dealt with, pursuant to provisions governing liquidation under the IBC.

6. However, the core opposition to the present application from the Respondent, despite the ruling of the Supreme Court permitting release of the ICICI Guarantee, is on the ground that the cash deposited in this Court does not belong to the corporate debtor.

7. When the matter was heard by this Bench, Mr. Saurabh

Bachhawat, Learned Counsel for the Applicant-Appellant submitted that in view of the operation of Section 14 of the IBC, the consequences of a successful CIRP, or of an abandonment of the CIRP, the rights of the Respondent in his capacity as the judgement creditor under the Impugned Judgement, would be subject to the provisions of the IBC.

8. In response, Mr. Ajit Anekar, Learned Counsel for the Respondent, submitted that the monies deposited in Court ought not to be released at all. According to him, such monies deposited in court are not an asset of the corporate debtor. According to Mr. Anekar, once a deposit of monies is made in Court, such amount would no longer be an asset of the corporate debtor. Therefore, he would submit, Section 14 of the IBC is irrelevant.

9. Mr. Anekar would submit that a decision of a Division Bench of this Court in an Interim Application No. 1161 of 2020 filed in First Appeal No. 1529 of 2012 in the case of *Reliance Communication Limited Vs. Rajendra Prasad Bansal* [2] (***Rajendra Bansal***) has laid down an absolute proposition that the moratorium under Section 14 of IBC does not prohibit withdrawal of monies deposited in Court by a corporate debtor, who is in appeal against a judgement creditor. It was Mr. Anekar's submission that ***Rajendra Bansal*** also relies on other judgements on the

[2] *2023 SCC OnLine Bom. 33*

rights of parties involved in an appeal, when the appellant becomes insolvent. According to him, the absolute proposition laid down in ***Rajendra Bansal*** would necessarily require this Application to be dismissed.

10. Pursuant to the aforesaid contention, since the order of the Supreme Court permitting revocation of the ICICI Guarantee was not very detailed, but was a disposal of the pleadings made before the Supreme Court, we called upon the parties to produce before us the pleadings in the Supreme Court.

Findings and Analysis:

11. It is from the record so produced, that the aforesaid factual matrix has been extracted. It is clear from a plain reading of the pleadings of the parties before the Supreme Court, and the outcome of permitting the revocation of the ICICI Guarantee, that the implications of the insolvency proceedings on the security interest created in the course of this Appeal, have been decided by the Supreme Court, and that too, inter-parties, taking into account the very contentions that are now raised before this Court.

12. For completeness, we must point out that in our opinion, monies deposited in Court by a corporate debtor are assets that are placed out of

the possession of the corporate debtor but by no means would the loss of possession eclipse the ownership of title to the monies so deposited. The assets provided to secure the outcome in the judgement impugned, are indeed assets owned by the party that deposited the security. The release of such assets would be subject to the outcome of the appeal. Such a deposit is indeed nothing but a security for a potential dismissal of the appeal. If the appeal were to be allowed, all the right, title and interest in the assets so deposited, would be released to the corporate debtor. Conversely, if the appeal were to be dismissed, all such assets would be released to the judgment creditor.

13. In our view, while a judgment creditor, who is entitled to a crystallized sum of money, would ordinarily be an unsecured creditor, upon a cash deposit being made in Court, such judgment creditor would have a security interest over the amount so deposited. However, the asset over which the security interest has been created, would indeed continue to be an asset of its owner — in the instant case, the corporate debtor. In the interregnum i.e. before the appellate proceedings are adjudicated and finally disposed of, if the corporate debtor who made the deposit, is adjudged bankrupt, the monies so deposited would form part of "liquidation estate" of the corporate debtor in terms of Section 36 of the

IBC. Towards that end, during the CIRP, the Resolution Professional is required to identify, secure and conserve the assets of the corporate debtor in terms of Section 18 of the IBC. If the CIRP were to succeed, the amounts to be released to various creditors including decree holders would be subject to the terms of the resolution plan that gets approved under Section 31 of the IBC. If the CIRP were to fail, the distribution of assets of the corporate debtor so conserved, would be in terms of the priority of distribution as set out in Section 53 of the IBC.

14. In our opinion, the error in the submissions of the Respondent lies in extrapolating the loss of possession of the asset (monies deposited in this Court), into an absence of ownership of the asset. Ownership and possession are two separate and distinct interests. Assets owned by one party may be in possession of another and for purposes of the IBC, it is vital to determine the ownership of the assets of the corporate debtor in order to identify the asset and conserve them under Section 18 of the IBC.

15. The IBC is a comprehensive and relatively new self-contained code governing insolvency and bankruptcy of, among others, corporate debtors. Even decree holders, who are creditors of the corporate debtor, would be subject to the operation of the IBC's provisions – with the moratorium under Section 14 prohibiting execution and enforcement of

the decree; a resolution enabling re-writing the obligation owed to such creditor; and liquidation, enabling distribution and payment from the liquidation estate, including to the decree-holder.

16. The order of the Supreme Court permitting revocation of the ICICI Guarantee constituting the very same security interest, relates to the very same CIRP and the disputes between the very same parties. Therefore, the decision of the Supreme Court would require disposal of this Application (for withdrawal of the cash deposited in this Court too). However, since the Respondent has submitted that ***Rajendra Bansal*** presents an absolute proposition of law, namely, that monies deposited in court do not belong to the corporate debtor, although the decision of the Supreme Court inter-parties should put an end to any further controversy, we believe it would be necessary to discuss and deal with the Respondent's contention.

Section 14 of IBC is relevant; not Section 231 of IBC:

17. In ***Rajendra Bansal***, a Division Bench of this Court first dealt whether it would be the NCLT or the appellate court, that is the appropriate forum to decide whether a corporate debtor who is a judgement debtor may withdraw monies deposited in appellate proceedings. In particular, the Court was called upon in the arguments

by the parties, to deal with the implications of Section 231 of the IBC, which ousts the jurisdiction of civil courts in respect of any matter where the IBC has conferred jurisdiction on the NCLT. The Division Bench held that this Court's jurisdiction over monies deposited with this Court was not ousted and supplanted by the jurisdiction of the NCLT. It was held that since an application for withdrawal of funds concerns monies deposited pursuant to an order of the appellate court (and that too before commencement of the CIRP and as a condition for stay on execution of proceedings), such an application for withdrawal cannot be said to have arisen due to the insolvency of the corporate debtor.

18. In our respectful view, the issue of whether Section 231 of the IBC ousts the jurisdiction of the civil court is not relevant to the matter at hand. In fact, in the instant case, the corporate debtor has applied to this Court to have the monies released to the corporate debtor, leaving the rights of the judgement creditor to be determined in line with a successful resolution plan, if any, failing which, under liquidation proceedings under the IBC. It is nobody's case that there is an ouster of jurisdiction of this Court under Section 231 of the IBC. Instead, what is involved in such cases is to consider the effect of the moratorium under Section 14 of the IBC on the monies deposited in court in appellate proceedings, prior to the CIRP.

19. Under Section 14 of the IBC, the jurisdiction of this Court is not ousted, but indeed, the jurisdiction of every Civil Court is restricted by an explicit prohibition against enforcement actions against the corporate debtor, including execution of decrees. For convenience, the provisions of Section 14 of the IBC are extracted below :

> ***Section 14 – Moratorium.***
>
> *(1) Subject to provisions of sub-sections (2) and (3), **on the insolvency commencement date,** the Adjudicating Authority shall by order **declare moratorium** for **prohibiting all of the following**, namely:--*
>
> > *(a) the **institution** of suits **or continuation** of pending **suits or proceedings against the corporate debtor** including **execution of any judgment, decree** or order in any court of law, tribunal, arbitration panel or other authority;*
> >
> > *(b) **transferring, encumbering, alienating or disposing** of by the corporate debtor **any of its assets or any legal right or beneficial interest therein**;*
> >
> > *(c) **any action to foreclose, recover or enforce any security interest** created by the corporate debtor in respect of its property **including any action** under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
> >
> > *(d) **the recovery of any property** by an owner or lessor **where such property is** occupied by or **in the possession of the corporate debtor**.*
> >
> > *Explanation.-- ******
>
> ***[Emphasis Supplied]***

20. It will be seen from a plain reading of the foregoing that under Section 14(1)(a), the moratorium that is triggered at the commencement of CIRP, prohibits among others, the continuation of proceedings against the corporate debtor, including execution of any judgement or decree in any court of law. In the matter at hand, the Respondent has not filed an application for withdrawal of monies deposited in court. In ***Rajendra Bansal***, the judgement creditor had applied and withdrawn funds deposited as security, and sought a further withdrawal of the balance amount. Be that as it may, in the present proceedings, it is the corporate debtor, who has submitted that in view of the prohibition on execution of the Impugned Judgment, there is no valid reason for the monies belonging to the corporate debtor and deposited in this Court, to continue to lie in this Court. The submission is that if the execution of a judgement is itself statutorily prohibited under Section 14 of the IBC, a deposit made in consideration of a stay against the execution of that judgement, would be quite meaningless.

21. It would also be seen that Section 14(1)(c) prohibits any action to recover or enforce any "security interest" created by the corporate debtor in respect of its properties. The term "security interest" is defined in Section 3(31) of the IBC as follows:

*(31) "**security interest**" means **right, title or interest or a claim***

> ***to property***, *created in favour of, or provided for a secured creditor* ***by a transaction which secures payment or performance of an obligation*** *and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:*
>
> *Provided that security interest shall not include a performance guarantee;*
>
> *[**Emphasis Supplied**]*

22. It will therefore be seen that a transaction that secures the payment or performance of an obligation, which creates a claim in favour of a secured creditor is a "security interest". Therefore, any and every right, title or interest or any claim to any property created in favour of a secured creditor would fall within the meaning of "security interest".

Decree-holder is a creditor with a 'claim' under IBC:

23. The term, "claim" is defined in Section 3(6) of the IBC as follows :

> *(6) "**claim**" means--*
>
> *(a) **a right to payment, whether or not such right is reduced to judgment**, fixed, disputed, undisputed, legal, equitable, secured or unsecured;*
>
> *(b) **right to remedy for breach of contract** under any law for the time being in force, **if such breach gives rise to a right to payment, whether or not such right is reduced to judgment**, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;*
>
> *[**Emphasis Supplied**]*

24. It will be seen that the term “claim” means a right to payment regardless of whether such right has been reduced to writing in a judgment. In the matter at hand, the right of the Respondent is a right reduced to writing in the Impugned Judgement, expressed in terms of a crystallised amount, adjudicated as being owed to the judgement creditor. It is the potential performance of the obligation corresponding to such right that has been secured by the deposit made in this Court in appellate proceedings. Consequently, we have no hesitation in holding that the monies deposited in this Court, which are sought to be released for conservation by the Resolution Professional, for eventually being dealt with in accordance with the provisions of the IBC, would, at the highest only constitute a security interest in respect of the claim of the Respondent and can never be held not to be the property of the corporate debtor.

25. It will also be instructive to examine the import of the terms, “creditor” and “debt” under the IBC. The relevant definitions from Sections 3(10) and 3(11), respectively, are extracted below :

> *(10) "**creditor**" means **any person to whom a debt is owed and includes** a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and **a decree-holder**;*
> *(11) "**debt**" means a **liability or obligation in respect of a claim** which is due from any person and includes a financial debt and operational debt;*
>
> *[**Emphasis Supplied**]*

26. Therefore, even a decree-holder is but a creditor. When a security interest is created to secure the claim of the decree-holder in relation to execution of the decree, the decree holder would, at the highest, be the creditor secured by the security interest.

27. Section 18 of the IBC would be relevant and is extracted below :

> ***Section 18 - Duties of interim resolution professional***
>
> *(1) The interim* ***resolution professional shall perform the following duties****, namely:—*
>
> > *(a)* ***collect all information relating to the assets****, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—*
> > *(i) business operations for the previous two years;*
> > *(ii) financial and operational payments for the previous two years;*
> > *(iii)* ***list of assets and liabilities as on the initiation date****; and*
> > *(iv) such other matters as may be specified;*
> >
> > *(b)* ***receive and collate all the claims submitted by creditors to him****, pursuant to the public announcement made under sections 13 and 15;*
> >
> > *(c) constitute a committee of creditors;*
> >
> > *(d)* ***monitor the assets of the corporate debtor and manage its operations*** *until a resolution professional is appointed by the committee of creditors;*
> >
> > *(e) file information collected with the information utility, if necessary; and*
> >
> > *(f)* ***take control and custody of any asset over which the***

corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.

Explanation.—For the purposes of this [1][section], the term "assets" shall not include the following, namely:—

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the

Shraddha

> *Central Government in consultation with any financial sector regulator.*
>
> *[Emphasis Supplied]*

28. It will be seen from Section 18(1)(f) that the Resolution Professional is required to take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor. Such assets may include assets that may not be in the possession of the corporate debtor. The cash deposited by the corporate debtor in this Court is an asset whose ownership would indeed be recorded in the balance sheet of the corporate debtor, but without the corporate debtor being in possession of the amount.

29. It must not be forgotten that with the leave of the Court, any asset deposited as security, in consideration of a stay, can also be replaced. In this very matter, originally, the deposit had entirely been in cash, and was replaced with a bank guarantee. Purely by way of example, if a corporate debtor were to have deposited securities in the form of say, equity shares held in a listed company, the corporate debtor making the deposit of such shares, would lose possession of the shares but would still be the owner of the shares so deposited – such a transaction would be akin to a pledge, but by no means would the asset cease to be owned by the corporate

debtor. Likewise, even title deeds to immovable property, if acceptable to the Court, could be deposited as security. Any such provision of security to secure the claim of a judgment creditor, leading to loss of possession, would not lead to loss of ownership of the assets. Consequently, Section 14 would not be irrelevant for such assets. Therefore, this is obviously why, based on the pleadings of the parties to this very case, the Supreme Court has allowed the ICICI Guarantee to be revoked.

Chowthmull – not relevant under IBC:

30. Indeed, ***Rajendra Bansal*** contains a finding that an asset deposited in Court, not being under the custody and control of the corporate debtor, would not constitute an asset owned by the corporate debtor. Such a position now stands negated by the Supreme Court having allowed the release of the ICICI Guarantee, in this very case.

31. ***Rajendra Bansal*** relies on a decision of the Calcutta High Court rendered in 1924, in *Chowthmull Maganmull Vs. Calcutta Wheat and Seeds Association*[3] (***Chowthmull***), to state that the law on the subject is a century old and remains unchanged. With the greatest respect, we are of the view that the provisions of the IBC have made deep interventions into the propositions flowing from ***Chowthmull***, with particular regard to

[3] *1924 SCC Online Cal. 335*

insolvency of corporate debtors.

32. In ***Chowthmull***, the judgment debtor was not a body corporate. In the course of an appeal, the judgement debtor deposited an amount in Court as security against execution proceedings. The monies deposited had been deposited by consent and the judgment creditor had also been given liberty to withdraw the monies so deposited upon posting security against such withdrawal, to the satisfaction of the Registrar. During pendency of proceedings, the judgement debtor was adjudicated insolvent. The Official Assignee of the insolvent did not proceed with the appeal, and yet claimed that the money deposited belonged to the insolvency estate for the benefit of the general body of creditors of the insolvent. The judgment creditor called upon the Official Assignee to decide whether the estate of the insolvent would pursue the appeal and if so, to post security for the costs of the appeal since the appellant (the judgement debtor) was had become insolvent.

33. The Official Assignee argued that the amounts deposited in Court belonged to the insolvent under the Presidency Towns Insolvency Act, 1909 ("***Insolvency Act***") at the commencement of the insolvency and that such monies belonged to all the creditors of insolvent. The Official Assignee stated that he would neither prosecute the appeal nor post any

security for costs. As a result, the appeal was dismissed and the costs incurred until then, were awarded. The judgment creditor argued that the money did not belong to the insolvent at the commencement of the insolvency and therefore did not vest in the Official Assignee for the benefit of the creditors. Dealing with the personal insolvency law contained in the Insolvency Act, it was ruled by the Calcutta High Court that the amount paid into Court was in fact the money of the judgment creditor, subject, however, to the outcome in the appeal. If the judgement creditor showed that the decree appealed against had been correctly decided in its favour, the monies would belong to the judgement creditor.

34. It is this analysis in ***Chowthmull*** that has been relied upon in ***Rajendra Bansal***, to state that the money deposited in court would cease to belong to the judgement debtor who deposited the funds. With the greatest respect, such an extrapolation is unfounded, which is why, in the instant case, the Supreme Court has allowed revocation of the ICICI Guarantee . At the threshold, it cannot be ignored that in ***Chowthmull*** itself, the Calcutta High Court repeatedly refers to the monies deposited in Court as “security”.

35. In sharp contrast, it is the IBC that should inform a decision on the manner in which the estate of the corporate debtor should be dealt with.

Under Section 14(1), even a decree that pre-exists the commencement of the CIRP cannot be enforced once the moratorium has commenced. Under the IBC, a decree-holder is merely a creditor having a claim. The amounts owed under the decree would be subject to the terms of the resolution plan, that is approved pursuant to the CIRP. If the CIRP were to fail, the decree-holder would be one of the creditors who would stand in queue along with other creditors for distribution of the assets of the corporate debtor in liquidation proceedings, to discharge his claim. In that view of the matter, in our opinion, ***Chowthmull*** does not represent a precedent for interpretation of the scheme of the law contained in the IBC.

Nahar HDIL Case – IBC overrides release of deposit:

36. There is one other judgement relied upon in ***Rajendra Bansal*** that warrants analysis – the case of *Nahar Builders Limited Vs. Housing Development and Infrastructure Ltd.*[4] (***Nahar HDIL Case***). Housing Development and Infrastructure Ltd. ("***HDIL***") had deposited a sum of Rs. 8 Crores pursuant to an interlocutory arrangement under Section 9 of the Arbitration and Conciliation Act, 1996 ("***Arbitration Act***") in a dispute with Nahar Builders Limited ("***Nahar***") that had been referred to arbitration. Eventually, the arbitration award was in favour of ***Nahar***,

[4] *2020 SCC Online Bom. 2522*

which filed an application to withdraw the sum of Rs. 8 Crores deposited under Section 9 of the Arbitration Act. Meanwhile, HDIL become insolvent, and was subject to CIRP, triggering the resultant moratorium under Section 14 of the IBC.

37. A Learned Single Judge of this Court held that once an amount is deposited in Court, it is placed beyond the reach of either party, and that therefore, such amount is not the property of the corporate debtor undergoing CIRP. According to the Learned Single Judge, once the arbitral award came to be passed, it became enforceable as a decree of the Court and no outstanding question remained about ownership of the amount. Since the Learned Single Judge ruled that the amount is not the property of either HDIL (or even Nahar for that matter), since HDIL had not challenged the arbitral award under Section 34 of the Arbitration Act, the the amount deposited was required to be released to Nahar.

38. When an appeal against the ruling of the Learned Single Judge came up before a Division Bench of this Court, Learned Counsel for Nahar made a with-prejudice statement to Court that since the deposited amount had already been released to Nahar, the amount in Nahar's possession would be subject to outcome of the proceedings under the IBC. On this premise, the Division Bench of this Court ruled that the

appeal could be disposed of, making it clear that the amount released to Nahar by the Learned Single Judge would be subject to the jurisdiction of NCLT under the IBC. Put differently, the necessary effect of the ruling by that Division Bench was that if the CIRP led to the amounts decreed under the arbitral award being written down under a resolution plan, Nahar would have to refund anything in excess of what is stipulated in the approved resolution plan. Put differently, the outcome under the IBC proceedings would override the release that had been made to Nahar by the Learned Single Judge. Therefore, in our respectful opinion, the decision in the ***Nahar HDIL Case*** actually underlines the overriding nature of the IBC over the claims of a decree-holder who would hold a right to execution.

39. Consequently, in our respectful opinion, the decision in the ***Nahar HDIL Case*** does not support a finding that monies deposited in Court are the property of the judgment creditor. On the contrary, the view of that Division Bench is explicit in its terms – that the amount released by the Learned Single Judge to Nahar, was explicitly made subject to the outcome of the proceedings under IBC.

40. At the risk of repetition, it must be remembered that in the matter at hand, dealing with the very same dispute between the very same

parties, the Supreme Court has considered the submissions made in the application for revocation of the ICICI Guarantee, provided in this very First Appeal. Our analysis of ***Rajendra Bansal*** is purely to enable clarity in the declaration of the law on the subject, with the Supreme Court having released the ICICI Guarantee.

41. For the reasons stated above, neither ***Chowthmull*** nor the ***Nahar HDIL Case***, support the position canvassed by Mr. Anekar, namely, that monies deposited in court by a corporate debtor prior to commencement of CIRP would cease to be assets of the corporate debtor, and that too as an absolute authoritative position.

Chettiar – emphatic declaration:

42. Finally, in our respectful view, a decision of the Supreme Court in the case of ***P.S.L. Ramanathan Chettiar Vs. O.R.M.P.R.M. Ramanathan Chettiar*** [5] (***Chettiar***), deserves emphasis. ***Chettiar*** has been distinguished in ***Rajendra Bansal***. Paragraphs 12, 13 and 14 of ***Chettiar*** are relevant and are extracted below :

> *12. On principle, **it appears to us that the facts of a judgment-debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder**. He can if he likes take the money out in terms of the order; but so long as he does not do it, **there is nothing to prevent the***

[5] *(1968) 3 SCR 367 :AIR 1968 SC 1047*

> *judgment debtor from taking it out by furnishing other security, say, of immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order 21 Rule 1 CPC in satisfaction of the decree.*
>
> *13. The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal. The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment-debtor.*
>
> *14. The observations in Chowthmull case do not help the respondent. In that case, the appeal was not proceeded with by the Official Assignee. Consequently, the decree-holder could not be deprived of the money which had been put into court to obtain stay of execution of the decree as but for the order, the decree-holder could have levied execution and obtained satisfaction of the decree even before the disposal of the appeal.*
>
> *[Emphasis Supplied]*

43. ***Chettiar*** was rendered in 1968 – much later in time as compared to ***Chowthmull***, which was rendered in 1924. In ***Chettiar***, the Supreme Court was dealing with a decree of 1946 which led to a deposit, staying the execution of the decree. ***Chettiar*** clearly lays down that a judgment debtor who deposited a sum in Court to buy peace by way of staying execution proceedings may withdraw the amount but on furnishing other security, and such a deposit would never pass title to the money to the decree-holder. ***Chettiar*** makes it clear that so long as the money is not withdrawn by the decree-holder by furnishing security, nothing prevents

the judgment debtor from replacing such monies with other assets as security (say, immovable property), if the Court allows him to do so. It is such property that would be used in satisfaction of execution proceedings to enforce the decree.

44. The real effect of deposit of money in court is to merely put the money outside the possession of the parties, pending disposal of the appeal. The decree-holder could take the money out, pending appeal, only on furnishing security, which would mean that the payment would never be in satisfaction of the decree. Should the judgment debtor succeed in the appeal, he would owe nothing to the decree-holder. Should the decree-holder succeed, such money may be released to him.

45. In the case at hand, the Respondent could not initiate execution proceedings because of the deposit having been made by the Applicant-Appellant. It is an admitted fact that the Respondent never sought to withdraw the monies by furnishing security. Had such withdrawal been made before the commencement of the CIRP, the corporate debtor (through the RP or liquidator, as the case may be), would have had to take action against the Respondent to bring the money back. If the Appeal had been disposed of in favour of the corporate debtor, the monies would have been placed back in possession of the corporate

debtor. The CIRP would pose no barrier to such proceedings.

46. In the instant case, the monies indeed remained in the books of the corporate debtor and in the possession of the Court, which is why, in the pleadings in the Supreme Court, the Respondent had itself submitted that the property was "*custodia legis*" – in contrast with the submission before this Court that the money was not at all an asset of the corporate debtor. If the Appeal had succeeded, the amounts so secured, would have been released to the corporate debtor. If the Appeal had failed, but the insolvency had intervened, the claim of the decree-holder would still be subject to the provisions of the IBC, and the amounts would not be automatically released to the Respondent.

47. In our opinion, it is the judgment in ***Chettiar*** that has some relevance to the law on deposit of monies in court, with the *caveat* that the IBC was not law at that time. Once the IBC came into force, as held by the Division Bench in the case of ***Nahar HDIL Case***, the amounts in the possession of judgement creditor were still be subject to the outcome of the IBC proceedings.

48. Recently, in the case of *GLAS Trust Company LLC Vs BYJU Raveendran & Ors*.[6] (***Byju***), the Supreme Court has discussed how

[6] *(2024 SCC OnLine SC 3032)*

principles of law governing insolvency and bankruptcy have been formulated afresh in the IBC. The Statement of Objects and Reasons have been extracted in ***Byju***, and a summary of the principles emanating from the IBC has been set out. The relevant extracts from ***Byju*** are set out below:

> ***35.*** *The Statement of Objects and Reasons for the IBC reads as follows:*
>
> > *"**Statement of Objects and Reasons.—** There is no single law in India that deals with insolvency and bankruptcy. Provisions relating to insolvency and bankruptcy for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These statutes provide for creation of multiple fora such as Board of Industrial and Financial Reconstruction (BIFR), Debts Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals. Liquidation of companies is handled by the High Courts. Individual bankruptcy and insolvency is dealt with under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 and is dealt with by the courts. **The existing framework for insolvency and bankruptcy is inadequate, ineffective and results in undue delays in resolution, therefore, the proposed legislation.***
> >
> > *2. **The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto.** An effective legal framework for timely*

resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

[...]

5. The Code seeks to achieve the above objectives.'"

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***37. The objectives discernible from the long title and the Statement of Objects and Reasons of the IBC were discussed in a decision of a two-judge bench of this Court in Swiss Ribbons (P) Ltd. v. Union of India. This Court observed that the IBC is a beneficial legislation which attempts to put the Corporate Debtor back on its feet**. According to this Court, this would involve considering the interests of all concerned stakeholders rather than viewing the IBC as a mere recovery legislation for individual creditors. This Court, speaking through Justice RF Nariman, observed as follows:*

> *"**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."

39. *From the above,* ***the following guiding principles emerge****, which we must keep in mind while determining the issues raised in the present appeal:*

a. A ***significant change brought about by the IBC*** *was the consolidation of the pre-existing fragmented insolvency framework,* ***The aim was to eliminate parallel proceedings by various creditors before different fora, given that all creditors would be a part of a single insolvency process under the IBC****;*

b. The above consolidation also sought to implement ***the principle of 'collective distribution'****, where the* ***interests of all stakeholders were considered****. The CIRP envisaged by the IBC is premised on* ***the principle that each creditor of the same class*** *should receive* ***a share that is proportionate to the debt owed to him****;*

c. ***IBC must not be used as a tool for coercion and debt recovery by individual creditors.*** *Improper use of the IBC mechanism by a creditor includes using insolvency as a substitute for debt enforcement or attempting to obtain preferential payments by coercing the debtor using insolvency proceedings.* ***That the mechanism under the IBC must not be used as a money recovery mechanism has been reiterated in a consistent line of precedent by this Court****; and*

d. The interests of the corporate debtor must be detached from those of its promoters/those who are in management. A "recalcitrant management" must be prevented from taking advantage of undue delays and preventing an inevitable insolvency. In other words, as noted by this Court in Arun Kumar Jagatramka (supra), the economic value of corporate structures is broader than the partisan interests of their management.

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44. *In summary, the scheme of the IBC under Chapter II gives rise to two significant principles:*

a. ***Once the petition is admitted, the proceedings are no longer the preserve of the applicant creditor and the debtor****. They now* ***become in rem*** *and* ***all creditors of the corporate debtor become stakeholders*** *in the process; and*

> *b. Once the petition is admitted, **the management of the affairs of the corporate debtor is vested in the IRP and eventually, in the RP**. Thus, the corporate debtor no longer exists in the form that it did, before the admission of the petition. Once CIRP is initiated, the interests of the erstwhile management of the corporate debtor must be distinguished from the interests of the corporate debtor.*
>
> ***[Emphasis Supplied]***

49. It will therefore be seen from ***Byju*** that the introduction of the IBC has clearly been held to be a significant departure from the fragmented legislation governing insolvency and bankruptcy, and into a new regime where enabling the corporate debtor under new ownership and management to be resolved lies at the heart of the legislative objective.

50. Before parting with the analysis, we may also profitably notice how the Supreme Court has dealt with pre-deposit stipulated under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("***SARFAESI Act***") as a condition for the Debt Recovery Appellate Tribunal ("***DRAT***") entertaining an appeal against an order passed by the Debt Recovery Tribunal under Section 17 of the SARFAESI Act. The second proviso stipulates that no appeal shall be entertained by the DRAT unless the borrower has deposited 50% of the debt due from him (the lesser of the amount claimed by the secured creditor; and the amount held as being

due by the Debt Recovery Tribunal). Holding that such a deposit does not constitute a "security interest" or a "secured asset", and that it is an entry condition for the DRAT to entertain an appeal, in *Axis Bank vs. SBS Organics Private Limited and Another*[7] (***Axis SBS***) ruled as follows:-

> *21. The Appeal under Section 18 of the Act is permissible only against the order passed by the DRT under Section 17 of the Act. Under Section 17, the scope of enquiry is limited to the steps taken under Section 13(4) against the secured assets.* ***The partial deposit before the DRAT as a pre-condition for considering the appeal on merits in terms of Section 18 of the Act, is not a secured asset. It is not a secured debt either, since the borrower or the aggrieved person has not created any security interest on such pre- deposit in favour of the secured creditor****. If that be so,* ***on disposal of the appeal, either on merits or on withdrawal, or on being rendered infructuous, in case, the appellant makes a prayer for refund of the pre-deposit, the same has to be allowed and the pre-deposit has to be returned*** *to the appellant,* ***unless*** *the Appellate Tribunal, on the request of the secured creditor but with the consent of the depositors, had already appropriated the pre-deposit towards the liability of the borrower, or with the consent, had adjusted the amount towards the dues, or* ***if there be any attachment on the pre-deposit in any proceedings*** *under Section 13(10) of the Act read with Rule 11 of The Security Interest (Enforcement) Rules, 2002,* ***or if there be any attachment in any other proceedings known to law****.*
>
> *[Emphasis Supplied]*

51. ***Axis SBS*** also holds that the deposit of the amount with the appellate tribunal is not a bailment with the secured creditor. The Court noted that Section 171 of the Contract Act, 1872 provides for a statutory bailment over assets kept, among others, with banks, unless there is a

[7] *(2016) 12 SCC 18*

contract to the contrary, and that no other person may claim a bailment in the absence of a contract. In the instant case, the terms on which the cash was deposited in this Court is governed by the order of this Court granting a stay on execution subject to the deposit.

52. Meanwhile, under the IBC, a statutory fetter on the deposit has come into operation. In ***Axis Bank SBS***, the Supreme Court has ruled that the pre-deposit not being a bailment must be returned to the borrower unless there is any attachment of the amount under any law. In the instant case, the moratorium on the enforcement of a claim for execution of a decree has commenced, and upon failure of the CIRP, the asset would form part of the liquidation estate. As stated in ***Byju***, the asset is meant to be distributed to the creditors in proportion to what is owed to them, and one of the creditors cannot steal a march over the others by being paid out specially outside the CIRP or the liquidation.

Conclusions and Directions:

53. Therefore, the pleadings considered by the Supreme Court in this very case on the very same question, and the resultant outcome of releasing the ICICI Guarantee, make it clear that security interests over the assets of the corporate debtor in order to secure amounts due from the corporate debtor under a judgement or decree would give way to the

provisions of the IBC. The proceedings under the IBC may lead to an approved resolution plan or liquidation of the corporate debtor. Therefore, it is not appropriate to continue to hold the position that the interplay between the rights of a judgement creditor and the implications of insolvency law as existing in 1924 (in terms of ***Chowthmull***) would still apply in 2024, when the IBC governs the field of insolvency and bankruptcy of corporate debtors. We have also explained above the real import of the ruling by the co-ordinate Division Bench in the ***Nahar HDIL Case***, which was essentially to make the release of the amount deposited under Section 9 of the Arbitration Act, to the judgement creditor in the arbitration proceedings, subject to the provisions of IBC. Since another co-ordinate bench in ***Rajendra Bansal*** proceeded to release funds deposited by a corporate debtor to the judgement creditor on its reading of ***Chowthmull*** and ***Nahar HDIL Case***, it is clarified that the ruling in ***Rajendra Bansal*** applies only to the parties in that case, although the statement of law as contained therein, has been overtaken, as explained above. Since the Supreme Court has conclusively released the ICICI Guarantee in this very case, no question of law remains for reference to any larger bench.

54. In the result, we hold that taking into account the decision of the Supreme Court in respect of the ICICI Guarantee, and that too based on

similar pleadings made by the parties before the Supreme Court; and also taking into account the provisions of the IBC and its implications for decree holders, the monies deposited in this Court are indeed assets under the ownership of the Applicant-Appellant, with possession being in the hands of the Court. No meaningful purpose would be served in continuing with the deposit, since even if the Appeal were to fail, the Respondent would need to be subjected to the CIRP run by the Committee of Creditors through the Resolution Professional. If the resolution attempts fail, the Respondent's rights under the Impugned Judgement would be subject to the waterfall mechanism for distribution of liquidation proceedings, stipulated under the IBC.

55. In the result, in view of the CIRP proceedings pending in relation to the Applicant-Appellant:-

A) We hold that monies or any other asset deposited by a corporate debtor in court prior to commencement of CIRP by way of security (to protect against execution of any judgement or decree), would not cease to be the asset of the corporate debtor;

B) Consequently, the monies deposited by the Applicant-Appellant in this Court constitute assets owned by the Applicant-Appellant although they are not in possession of the Applicant-Appellant;

C) Therefore, we hereby permit the Applicant-Appellant to withdraw Appeal No. 597 of 2016, and indeed withdraw the amounts deposited in this Court in these proceedings, along with all earnings thereon. Refund of Court fees shall be processed as per Rules;

D) The amounts deposited in Court shall be released to the Applicant-Appellant within a period of two weeks from today, subject to compliance with the procedural rules of this Court, administered by the Registry; and

E) The substantive rights of the Respondent who is the judgement creditor under the Impugned Judgement shall be subject to the provisions of the IBC.

56. We make it clear that apart from the interpretation of the law and application of the law to the facts for purposes of considering Interim Application (Lodging) No. 31055 of 2024, we have not expressed any opinion on any other facet of the dispute between the parties.

57. Appeal No. 597 of 2016 is hereby disposed of as withdrawn. Refund of Court fees as per Rules. Interim Application (Lodging) No.

31055 of 2024 is also disposed of in the aforesaid terms. Needless to say, since the Appeal stands disposed of, any other connected application too would stand automatically disposed of.

58. This order/judgement will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order/judgement.

[SOMASEKHAR SUNDARESAN, J.] **[B.P. COLABAWALLA, J.]**

Shraddha