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IN THE HIGH COURT AT CALCUTTA

ORIGINAL SIDE

COMMERCIAL DIVISION

G.A. (COM) No. 1 of 2025

In

C.S. (COM) No. 93 of 2025

MANI SQUARE LIMITED & ANR.

-VS-

PIRAMAL FINANCE LIMITED & ORS.

BEFORE:

The Hon'ble Justice Krishna Rao

Hearing Concluded On : 12.08.2025

Order On : 19.08.2025

Appearance:

Mr. Jishnu Saha, Sr. Adv.

Mr. Ratnanko Banerji, Sr. Adv.

Mr. Aditya Kanodia, Adv.

Mr. Ishaan Saha, Adv.

Ms. Suparna Sardar, Adv.

Ms. Shreya Trivedi, Adv.

... for the petitioners.

Mr. Sudipto Sarkar, Sr. Adv.

Mr. Krishnaraj Thaker, Sr. Adv.

Mr. Soorjya Ganguli, Adv.
Ms. Pooja Chakraborty, Adv.
Mr. Murtaza Kachhwalla, Adv.
Mr. Somdutta Bhattacharyya, Adv.
Mr. Kiran Sharma, Adv.
Ms. Arti Bhattacharyya, Adv.
Mr. Sagnik Aditya, Adv.
... for the respondent nos. 1 and 2.

Mr. S.N. Mookherjee, Sr. Adv.
Mr. Piyush Agarwal, Adv.
Mr. Yash Singhi, Adv.
Ms. Shrivalli Kajaria, Adv.
Ms. Saloni Kumar, Adv.
... for the respondent no. 3.

ORDER

1. The petitioners have filed the present application for grant of interim relief. The petitioners are the Mani Group of Companies and carrying out their business in Real Estate, Hospitality and Edu-health in West Bengal, Odisha and Rajasthan. The respondent no.1 is a non-banking Financial Company (NBFC). The respondent nos. 3 and 4 are the Key Personnel and decision makers of the petitioners. The respondent no. 5 is the wife of the respondent no.3 and the respondent no. 6 is the Director and Key Person for Siom Reality Pvt. Ltd., a Real Estate Company tasked with the development of "Shreemani Haat" at premises

no. 40, Mahatma Gandhi Road, Kolkata belonging to the petitioner no.2.

2. The petitioner no.1 along with three other promoters took up development of a Real Estate Project "The 42", a 260 mtrs. tall iconic structure at premises No. 42B, Chowringhee Road, Kolkata. The project was owned and was developed by a Special Purpose Vehicle (SPV) Chowringhee Residency Pvt. Ltd. (CRPL) and the petitioner no.1 was the largest shareholder of CRPL.

3. In the year 2017-2018, the project "The 42" suffered various impediments resulting in serious issues to the petitioner no.1 when one of the co-promoters of the project "The 42" Mr. Bijay Agarwal of Sattva Group arranged sanction of a loan to the petitioner no.1 from the respondent no.1 in terms and conditions of the Sanction Letter dated 20th August, 2018. On 12th September, 2018, the parties executed a Loan Agreement. Other transaction documents like Security Documents were also executed by and between the parties.

4. The sanction of Piramal Loan of 2018 was for a sum of Rs. 120 Crores out of which, a sum of Rs. 95.50 Crores was disbursed upfront and an aggregate sum of Rs. 12.56 Crores was disbursed time to time which was essentially for servicing of interest on the Piramal Loan of 2018.

5. Mr. Jishnu Saha, Learned Senior Advocate representing the petitioner no.1 submits that the petitioner had from the year 2018 till the month of May 2022 paid to the respondent no.1, a sum of Rs. 68.24 Crs.

towards Service of Interest, a sum of Rs. 26.12 Crs. towards redemption of loan and a sum of Rs. 81.94 Crs. was still due and payable by the petitioners on account of Principal. He submits that the Project "The 42" suffered serious cash losses and capital erosion and the audited balance sheet of CRPL for the financial year ended 31st March, 2021, revealed increased losses resulting in capital erosion of the promoters of CRPL including that of the petitioner no.1 thereby bringing in a threat of default and nonpayment of the dues of the respondent no.1 in Piramal Loan of 2018.

6. Mr. Saha submits that while the Piramal Loan of 2018 was continuing, sometimes in the month of January, 2019, it surfaced that the respondent no.1, as their business practice tend to identify entrepreneurs in stress on their own and start charging and recovering usurious interest on unexplained pretext. He submits that the first surfaced in January, 2019 when the agreed rate of 15% interest per annum on the Piramal Loan of 2018 was sought to be revised northwards citing inadequate explanations. He submits that sanctioned interest rates were arbitrarily increased on various occasions.

7. On the issue of usurious interest and on the issue of how to pay the debt of Piramal, a physical meeting was held on 3rd December, 2021. The Mani Group offered mortgage and cashflows of other Mani Group projects, namely, "The 42 @ Middleton", "Shreemani Haat", Pledge of the controlling interest owned by the petitioner no.1, being 31,00,000 number equity shares (equivalent to 62% equity) of Maniam Properties

Pvt. Ltd., the SPV owning Pink Square Mall in 3 acres plot bearing nos. 1& 2, Govind Marg, Raja Park, Janta Colony, Jaipur, Rajasthan was also made by the petitioner and Personal Guarantees extended by the Respondent nos. 3 to 5 to secure the credit facilities availed under the first loan, were also to continue as securities for the second loan.

8. Taking into consideration of the solvency, creditworthiness, sound and stable business model and also capacity to meet its creditors obligation, the respondent no.1 sanctioned a sum of Rs. 106 Crs. to the petitioner no.2 with an explicit understating that the funds disbursed to the petitioner no.2 will be used and routed to redeem/service the loan of 2018 standing to the debit of the petitioner no.1. A Loan Agreement dated 30th June, 2022, was also entered between the parties.

9. Out of the sanction loan amount of Rs. 106 Crs., an amount of Rs. 102 Crs. was disbursed by the respondent no.1 to the petitioner no.2. By a letter dated 21st December, 2022, the respondent no.3 informed to the Mr. Yesh Nadkarni, CEO of the respondent no.1 of all the events with regard to the Piramal Loan of 2018 and the issue of usurious interest charged. The respondent no.1 sent a reply on 23rd December, 2022 to the respondent no.3. A meeting was also held between the respondent no.3 and Mr. Yesh Nadkarni, CEO of the respondent no.1 and assured the respondent no.3 that the respondent no.1 would get back to how the respondent no.1 could compensate the petitioner no.1 for the usurious interest charged in consultation with the committee. The

petitioner no.2 has paid a sum of Rs. 35.66 Crs. towards service of interest and Rs. 31.77 Crs. towards redemption of loan.

10. Mr. Saha submits that the petitioner no.2 has repaid a total loan of Rs. 31.77 Crs. against the total disbursement of Rs. 102 Crs., the respondent no.1 has not released any part or portion of the securities furnished and continues to hold all the securities as mentioned in Schedule 'V' of the Loan Agreement of 2022. He submits that inspite of excess security held by the respondent no.1, the respondent nos. 1 and 2 have wrongfully and unlawfully purported to recall the Piramal Loan of 2022 of false and frivolous ground.

11. Mr. Saha submits that the Reserve Bank of India in terms of their Master Circular dated 1st July, 2014, has classified payments, delayed payments of interest and repayment installments. He submits that none of the dues of Mani Group under the Piramal Loan of 2018 or Piramal Loan of 2022 have slipped to or qualified as NPA under the said classifications. He submits that the Piramal Loan of 2018 was sanctioned and disbursed at the rate of 15% per annum compounded quarterly but soon after the disbursal the rate of interest was changed to 15.25% per annum without any prior notice or intimation.

12. Mr. Saha submits that in terms of the agreement between the parties, the entire quarterly instalment which had fallen due on 5th April, 2025, has been paid by the petitioner no.2. He submits that by a letter dated 28th May, 2025, the respondent no.1 had sought to recall, although

illegally, only a part of the loan amount being a principal sum of Rs. 12.75 Crores and not the entire loan amount. He submits that by a letter dated 28th May, 2025, the respondent no.1 had demanded only Rs. 15,40,96,746/- and not the entire principal amount. He submits that all of a sudden on 13th June, 2025, the respondent nos.1 and 2 took a U turn and alleged that the letter dated 28th May, 2025, was a Loan Recall Notice for the entire loan amount and further alleged that as on 11th June, 2025, a total amount of Rs. 92,83,54,040/- had become due and payable to the respondent nos.1 and 2.

13. Mr. Saha submits that in case of delay in repayment of an instalment under the Loan Agreement, the respondent no.1 is entitled to levy penal interest on the defaulted amount and the default, if any, is a curable default. He submits that the conduct of the respondent no.1 is in violation of the Loan Agreement. The Loan Recall Notice is in fact a conspiracy hatched between the respondent no.1 and one Mr. Bijay Agarwal of Sattva Group.

14. Mr. S.N. Mookherjee, Learned Senior Advocate representing the respondent no.3 submits that by a letter dated 7th April, 2025, the respondent no.1 called upon the petitioner no.1 and the respondent nos. 3, 4 and 5 for payment of TDS due under the Load Agreement within 7 (seven) days from the date of receipt of notice. At the same time, another notice was issued to the petitioners as well as respondent nos. 3 to 6 for making payment of balance outstanding amount within 7 (seven) days.

15. Mr. Mookherjee submits that on 15th April, 2025, the respondent no.2 issued a notice to the petitioners and the respondent nos. 3 to 6 for payment of overdue amounts within 3 (three) days from the date of receipt of the said notice. Again on 22nd April, 2025, the respondent no.1 issued notice calling upon the petitioners and the respondent nos. 3 to 6 for payment of outstanding due immediately. He submits that in the Loan Agreement, no time is prescribed but the respondent no.1 of his own sent notice for 7 (seven) days, 3 (three) days and without any time though the time is not the essence of contract.

16. Mr. Mookhrejee submits that in the Loan Agreement, there prescribed penal interest and, if any, delay in payment, the petitioners are paying penal interest to the respondent no.1 and the respondent no.1 time to time accepted the penal interest on delayed payment.

17. Mr. Mookherjee submits that the notice dated 28th May, 2025, is not issued by the respondent no.1 who is the lender but is issued by the respondent no.2 who is the security trustee and the security trustee has no authority to issue such notice either to the petitioners or to the respondent nos. 3 to 6. He further submits that in the notice dated 28th May, 2025, the respondent no.2 has called upon the petitioners and the respondent nos. 3 to 6 for payment of outstanding amount within 15 (fifteen) days from the date of receipt of notice.

18. Mr. Mookhrejee submits that the recall notice dated 13th June, 2025, is also issued by the respondent no.2 though the respondent no.2 being

the security trustee has no authority to issue such notice. He further submits that in the Loan Agreement, there is no clause for recalling of loan. He further submits in the Loan Agreement, it is prescribed that if there is any delay in repayment of loan, the petitioners are liable to pay penal interest but there is no clause for recalling of Loan. He further submits that even after issuance of recalling notice, the respondent no.1 has accepted the loan amount along with penal interest. He further submits that the respondent no.1 has not issued any notice intimating that the respondent no.1 will recall the loan.

19. Mr. Ratnanko Banerji, Learned Senior Advocate representing the petitioner no.1 relied upon Section 59 of the Contract Act, 1872 and submits that on several occasions, there was delay in paying the loan amount but the petitioners have paid the loan amount along with penal interest and the respondent no.1 has accepted the same. He submits that time is not the essence of contract and there is nothing in the Loan Agreement to recall of loan, thus the act of the respondent nos. 1 and 2 is illegal.

20. Mr. Banerji submits that since the month of October, 2024 whenever delay is occurred in payment of loan amount to the petitioners have paid the loan amount along with penal interest. He further referred to the e-mail dated 24th April, 2025 wherein the respondents have mentioned that the respondents would like to initiate enforcement against the petitioners only and at later stages the respondents involve

Salapuria Group which itself shows the mala fide intention of the respondents.

21. Mr. Sudipto Sarkar, Learned Senior Advocate representing the respondent no.1 raised preliminary objection to the maintainability of the suit filed by the petitioners on the ground that the respondent no.1 has filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 and thus as per Section 63 and Section 231 of the said Code, this Court has no jurisdiction to entertain the suit filed by the petitioners.

22. Mr. Sarkar submits that before filing of the suit by the petitioners, the respondent no.1 has filed an application before the Learned Tribunal under Section 7 of the said Code and the petitioners have disclosed the same in the plaint but having the knowledge that the respondent no.1 has initiated proceeding under Section 7 of the said Code, the petitioners have filed the suit.

23. Mr. Sarkar relied upon Clause 16 of the terms and conditions of the Loan Agreement and submits that as per the said provision, the Lender shall have the sole discretion and without any recourse to the Borrower and that such determination by the Lender shall be final, valid and binding.

24. Mr. Sarkar further relied upon Clause 17 of the terms and conditions and submits that as per said clause, the respondents have the right to cancel or terminate any available commitment.

25. Mr. Sarkar submits that on 28th May, 2025, notice was issued to the petitioners and the respondent nos. 3 to 6 for payment of outstanding amount of Rs. 15,40,96,746/- within a period of 15 days from the receipt of the notice but the petitioners have paid only Rs. 91,68,337/-.

26. Mr. Sarkar submits that the petitioners failed to pay the outstanding dues within 15 days from the date of receipt of notice dated 28th May, 2025, thus by a notice dated 13th June, 2025, the respondents have recalled the total loan amount.

27. Mr. Sarkar submits that the petitioners time and again defaulted in paying the loan amount in time and the respondents have given sufficient opportunity for payment of loan but inspite of receipt of notices time and again, the petitioners have failed to pay the loan amount in time.

28. Mr. Sarkar submits that the prayers made in the present application and in the suit is hit by Section 41(b) of Specific Relief Act. He submits that by filing the suit and by obtaining injunction, the petitioners indirectly intending to restrain the respondents for initiation of proceeding under Section 7 of the Insolvency and Bankruptcy Code, 2016.

29. Mr. Krishnaraj Thaker, Learned Senior Advocate representing the respondent no.2 submits that prior to filing of the suit, the petitioners have never raised any allegation that the respondents are in connivance

of Salapuria. He submits that the petitioners are the habitual defaulters in paying the loan amount in time.

30. Mr. Thaker relied upon the Security Trustee Agreement and submits that as per Clause 2.13 of the said agreement, the Security Trustee has the right to take appropriate steps in terms and conditions of the agreement of Finance Documents. He submits that as per Clause 5, if the Security Trustee has knowledge of any Event of Default, the Security Trustee has the authority to issue notice to the Lender.

31. The first issue raised by the respondent nos.1 and 2 is that the suit filed by the petitioners is not maintainable under Section 63 and Section 231 of the Insolvency and Bankruptcy Code, 2016. By an e-mail dated 14th June, 2025, the respondent no.1 has submitted an application under Section 7 of the Insolvency and Bankruptcy Code, 2016. By an email dated 26th June, 2025, the respondent no.1 has forwarded the said application to the petitioner no.1 by informing that the respondent no.1 has filed the said application before the Learned National Company Law Tribunal. Mr. Sarkar, Learned Senior Advocate relied upon the Judgment in the case of ***Innovative Industries Limited Vs. ICICI Bank and Another*** reported in ***(2018) 1 SCC 407*** wherein the Hon'ble Supreme Court held that:

> ***"27.*** *The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and*

payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. *When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to*

> *ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."*

32. Mr. Sarkar further relied upon the Judgment in the case of ***Tejinder Pal Setia vs. Kone Elevators India P. Ltd. and Another*** reported in ***2023 SCC OnLine Del 8009*** wherein the Delhi High Court held that the plaintiff being the member of erstwhile board of directors of *"Chandigarh Overseas P. Ltd."* and the said company is undergoing corporate insolvency resolution process, the present suit is precluded/ barred under Section 231 of the Insolvency and Bankruptcy Code, 2016.

33. It is the contention of the petitioners and the respondent no.3 that the respondent no.1 has only submitted an application under Section 7 of the IBC and the same has not yet been admitted and thus the suit is maintainable. It is the case of the petitioners that the petitioners have

challenged the loan recovery notice and the NCLT cannot decide the same. It is further contentions that the respondent nos.1 and 2 have played fraud upon the petitioners that Mr. Agarwal at the instance of Sattva Group, induced the petitioner no.1 to avail Piramal Loan of 2018 from the respondent no.1. Unilaterally enhanced the rate of interest under the Piramal Loan of 2018 by the respondent no.1. The recall of Piramal Loan on frivolous ground of delay in repayment of EMI which is de hors the Loan Agreement and recall notice is an attempt to falsely and frequently declare Piramal Loan of 2022 having been defaulted and to invoke the pledge to confiscate the shares and sell the same to Mr. Agarwal.

34. Mr. Saha relied upon the Judgment in the case of ***Indus Biotech Private Limited vs. Kotak India Venture (Offshore) Fund (Earlier Known as Kotak India Venture Limited) & Ors.*** reported in ***(2021) 6 SCC 436*** wherein the Hon'ble Supreme Court held that:

> ***"33.*** *In the letter dated 21-11-2018 addressed by Indus Biotech Pvt. Ltd. to Kotak India Venture, it was mentioned with regard to the fundamental issue that needs to be addressed regarding conversion and convertible securities into equity shares since the exit process initiated cannot move forward without such conversion. The letter dated 17-12-2018 addressed to Indus Biotech Pvt. Ltd. by Kotak India Venture in fact refers to the stake in conversion and the dispute being as to whether it should be 10% of the share capital of the company as offered by Indus Biotech Pvt. Ltd. or 30% as claimed by Kotak India Venture Fund. It is that aspect of the matter, which is still contended to be in dispute between the parties regarding which the arbitration is sought by Indus Biotech Pvt. Ltd., which was also noted by the adjudicating*

authority. We express no opinion on the merits of the rival contention relating to the dispute.

34. *In such situation, in our opinion, it would be premature at this point to arrive at a conclusion that there was default in payment of any debt until the said issue is resolved and the amount repayable by Indus Biotech Pvt. Ltd. to Kotak India Venture with reference to equity shares being issued is determined. In the process, if such determined amount is not paid it will amount to default at that stage. Therefore, if the matter is viewed from any angle, not only the conclusion reached by the adjudicating authority, NCLT insofar as the order on the petition under Section 7 of the IB Code at this juncture based on the factual background is justified but also the prayer made by Indus Biotech Pvt. Ltd. for constitution of the Arbitral Tribunal as made in the petition filed by them under Section 11 of the 1996 Act before this Court is justified.*

35. *In that circumstance though in the operative portion of the order dated 9-6-2020 the application filed under Section 8 of the 1996 Act is allowed and as a corollary the petition under Section 7 of the IB Code is dismissed; in the facts and circumstances of the present case it can be construed in the reverse. Hence, since the conclusion by the adjudicating authority is that there is no default, the dismissal of the petition under Section 7 of IB Code at this stage is justified. Though the application under Section 8 of the 1996 Act is allowed, the same in any event will be subject to the consideration of the petition filed under Section 11 of the 1996 Act before this Court. The contention as to whether payment of investment in preferential shares can be construed as financial debt was raised in the written submissions. However, we have not adverted to that aspect since the same was not the basis of the impugned order passed by the adjudicating authority."*

35. Mr. Saha relied upon the judgment in the case of ***Embassy Property Developments Private Limited vs. State Bank of Karnataka and***

Ors. reported in ***(2020) 13 SCC 308*** in which the Hon'ble Supreme Court held that:

> *"**30.** The NCLT is not even a civil court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognizance is either expressly or impliedly barred. Therefore NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which, it is called upon to administer. Hence, let us now see the jurisdiction and powers conferred upon NCLT.*
>
> ***Jurisdiction and powers of NCLT***
>
> ***31.** NCLT and NCLAT are constituted, not under the IBC, 2016 but under Sections 408 and 410 of the Companies Act, 2013. Without specifically defining the powers and functions of the NCLT, Section 408 of the Companies Act, 2013 simply states that the Central Government shall constitute a National Company Law Tribunal, to exercise and discharge such powers and functions as are or may be, conferred on it by or under the Companies Act or any other law for the time being in force. Insofar as NCLAT is concerned, Section 410 of the Companies Act merely states that the Central Government shall constitute an Appellate Tribunal for hearing appeals against the orders of the Tribunal. The matters that fall within the jurisdiction of the NCLT, under the Companies Act, 2013, lie scattered all over the Companies Act. Therefore, Sections 420 and 424 of the Companies Act, 2013 indicate in broad terms, merely the procedure to be followed by the NCLT and NCLAT before passing orders. However, there are no separate provisions in the Companies Act, exclusively dealing with the jurisdiction and powers of NCLT.*
>
> ***36.** Interestingly, there are separate provisions both in Part II and Part III of the IBC, 2016 ousting the jurisdiction of civil courts. While Section 63 contained in Part II bars the jurisdiction of a civil court in respect of any matter on which*

NCLT or NCLAT will have jurisdiction, Section 180 contained in Part III bars the jurisdiction of civil courts in respect of any matter on which DRT or DRAT has jurisdiction. But curiously there is something more in Section 180 than what is found in Section 63, which can be appreciated if both are presented in a tabular column:

Section 63	*Section 180*
*"**63. Civil court not to have jurisdiction**.—No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil court not to have jurisdiction."*	*"**180. Civil court not to have jurisdiction**.—(1) No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal has jurisdiction under this Code.* *(2) No injunction shall be granted by any court, tribunal or authority in respect of any action taken, or to be taken, in pursuance of any power conferred on the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal by or under this Code."*

Though what is found in sub-section (2) of Section 180 is not found in the corresponding provision in Part II, namely, Section 63, a similar provision is incorporated in an unrelated provision, namely, Section 64, which primarily deals with expeditious disposal of applications. Thus, there appears to be some mix-up. However, we are not concerned about the same in this case and we have made a reference to the same only because of sub-section (4) of Section 60, vesting upon the NCLT, all the powers of the DRT.

> ***41.*** *Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right."*

36. Section 7 of the Insolvency and Bankruptcy Code, 2016, contemplates that in order to trigger an application thereunder, there should be in existence of four factors: (i) there should be a "debt". (ii) "default", (iii) debt should be due to "financial creditor" and (iv) such default which has occurred should be by a "corporate debtor". On such application being filed with compliance required under Section 7 (1) to (3) of Insolvency and Bankruptcy Code 2016, a duty is cast upon the adjudicating authority to ascertain the existence of a default if shown from the records or on the basis of other evidence furnished by the financial creditor, as contemplated under Section 7(4) of the IBC.

37. The procedure contemplated in the IBC will indicate that before the adjudicating authority is satisfied as to whether the default has occurred or not, in addition to the material placed by the financial creditor, the corporate debtor is entitled to point out that the default has not occurred and that the debt is not due, consequently to satisfy the adjudicating authority that there is no default. In such exercise undertaken by the adjudicating authority, if it is found that there is a default, the process as contemplated under sub-Section (5) of Section 7 is to be followed as provided under sub-Section (5)(a) or if there is no

default the adjudicating authority shall reject the application as provided under sub-Section 5(b) to Section 7 of the IBC. In that circumstance, if finding of default is recorded and the adjudicating authority proceeds to admit the application, the corporate insolvency resolution process commences as provided under sub-Section (6) of Section 7 of the IBC and required to proceed further. In such event, it becomes a proceeding in rem on the date of admission and from that point onwards the Civil Court has no jurisdiction. Therefore, the trigger point is not filing of the application under Section 7 of the IBC but admission of the same on determining default.

38. In view of the above, this Court finds that the respondent no.1 has only filed an application under Section 7 of the IBC but it is not admitted till the date of hearing of this application, thus this Court has the jurisdiction.

39. The petitioners have filed the suit praying for a declaration that the letters dated 28th May, 2025; 8th June, 2025; 13th June, 2025 and 16th June, 2025 as void and illegal. As per Clause 2.3 of the Loan Agreement, default interest is provided which reads as follows :

> *"**2.3.** If the Borrower defaults payment of the Outstanding Amounts on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment at the rate as specified in **Schedule II** hereunder. The Default interest accruing under this Clause 2.3.1 shall be immediately payable by the Borrower on demand by the Lender. **Default Interest** (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each interest Period applicable to that acknowledges that the further*

rates of interest in this Clause 2 are reasonable and that they represent genuine pre-estimates of the losses expected to be incurred by the Lender in the event of non-payment of any monies by the Borrower."

40. The petitioners submit that time is never the essence of contract unless expressly provided by the parties to a contract. In the case of ***M/s. Hind Construction Contractors by Its Sole Proprietor Bhikamchand Mulchand Jain (Dead) by Lrs. Vs. State of Maharashtra*** reported in ***(1979) 2 SCC 70,*** the Hon'ble Supreme Court held that :

"7. *The first question that arises for our consideration, therefore, is whether time was of the essence of the contract that was executed between the parties on July 12, 1955 (Ex. 34). It cannot be disputed that question whether or not time was of the essence of the contract would essentially be a question of the intention of the parties to be gathered from the terms of the contract. The contract in the instant case is for the construction of an aqueduct across the Alandi River at Mile 2 of the Nasik Left Bank Canal and unquestionably 12 months' period commencing from the date of the commencement of the work had been specified within which the construction had to be completed by the appellant-plaintiff. Indisputably, in the work order dated July 2, 1955 the Executive Engineer had directed the appellant-plaintiff to commence the work by July 5, 1955 intimating in clear terms that the stipulated date for starting the work would be reckoned from July 5, 1955. Both the trial court as well as the High Court have found that mentioning of July 5, 1955 as the date for starting the work was not nominal but was real date intended to be acted upon by the parties. It is, therefore, clear that 12 months' period mentioned for the completion of the work was to expire on July 4, 1956. The question is whether this period of 12 months so specified in the contract was of the essence of the contract or not? On the one hand,*

counsel for the appellant-plaintiff contended that the contract being analogous to a building contract the period of 12 months would not ordinarily be of the essence of the contract as the subject-matter thereof was not such as to make completion to time essential, that an agreement to complete it within reasonable time would be implied and that reasonable time for completion would be allowed. On the other hand, counsel for the respondent-defendant contended that time had been expressly made of the essence of the contract and in that behalf reliance was placed upon clause (2) of the "Conditions of Contract" where not only time was stated to be of the essence of the contract on the part of the contractor but even for completion of proportionate works specified periods had been specified and, therefore, the appellant-plaintiff's failure to complete the work within the stipulated period entitled the respondent-defendant to rescind it. In the latest 4th Edn. of Halsbury's Laws of England in regard to building and engineering contracts the statement of law is to be found in Vol. 4, para 1179, which runs thus:

> *"1179. Where time is of the essence of the contract.—The expression time is of the essence means that a breach of the condition as to the time for performance will entitle the innocent party to consider the breach as a repudiation of the contract. Exceptionally, the completion of the work by a specified date may be a condition precedent to the contractor's right to claim payment. The parties may expressly provide that time is of the essence of the contract and where there is power to determine the contract on a failure to complete by the specified date, the stipulation as to time will be fundamental. Other provisions of the contract may, on the construction of the contract, exclude an inference that the completion of the works by a particular date is fundamental: time is not of the essence where a sum is payable for each week that the work remains incomplete after the date fixed, nor where the parties contemplate a postponement of completion.*

> *Where time has not been made of the essence of the contract or, by reason of waiver, the time fixed has ceased to be applicable, the employer may by notice fix a reasonable time for the completion of the work and dismiss the contractor on a failure to complete by the date so fixed."*

41. Upon reading the said clause, it is clear that if the petitioners failed to pay the outstanding amount on its due date, the petitioners are liable to pay penal interest along with the actual interest of the outstanding due amount. In the said clause, there is no such provision that if the outstanding amount is not paid on its due date, the loan will be recalled. Thus *prima facie* it reveals that if the petitioners failed to pay the loan amount and the interest accrued therein within the due date, the petitioners are liable to pay the amount, interest and the penal interest to the respondents. The respondent no. 1 has issued notice on 28th May, 2025, calling upon the petitioners and the respondent nos. 3, 4, 5 and 6 for payments of the amount of Rs. 15,40,96,746/- within a period of 15 days from the date of receipt of notice, though the petitioners have not paid the total amount of Rs.15,40,96,746/- but have paid an amount of Rs. 1,04,83,077/- on 2nd May, 2025 which was duly accepted by the respondent no. 1 and subsequently on 5th June, 2025, the petitioners have paid an amount of Rs. 91,68,337/- but inspite of the receipt of the said amount and without considering the amount paid by the petitioners, the respondent no. 2 being the Security Trustee has issued the impugned notice dated 13th June, 2025 by recalling the total loan amount. Even after recalling the total loan

amount, the respondent no. 1 has received further amount of Rs. 14,00,00,000/- on 18th June, 2025 and an amount of Rs. 65,85,989/- as TDS, accordingly, the petitioners have paid the total amount of Rs. 16,62,37,403/-. The petitioners have paid an excess amount of Rs. 7,28,223/- then the claim made by the respondent nos. 1 and 2. It is also submitted that even after recalling of the loan, the petitioners have paid the loan amount along with interest and the respondent nos. 1 and 2 have accepted the same without any objection.

42. It is the contention of the respondents that by way of an interim order, the petitioners intent to restrain from initiation of proceeding under Section 7 of the IBC and have relied upon Section 41(b) of the Specific Relief Act. In support of their submissions, have relied upon the Judgment in the case of ***Cotton Corporation of India Limited vs. United Industrial Bank Limited and Others*** reported in ***(1983) 4 SCC 625*** wherein the Hon'ble Supreme Court held that:

> ***"9.*** *Viewed from a slightly different angle, it would appear that the legal system in our country envisages obtaining of redressal of wrong or relief against unjust denial thereof by approaching the court set up for the purpose and invested with power both substantive and procedural to do justice that is to grant relief against invasion or violation of legally protected interest which are jurisprudentially called rights. If a person complaining of invasion or violation of his rights is injuncted from approaching the court set up to grant relief by an action brought by the opposite side against whom he has a claim and which he wanted to enforce through court, he would have first to defend the action establishing that he has a just claim and he cannot be restrained from approaching the court to obtain relief."*

43. In prayers (a) to (d), the petitioners have prayed for declaration that the alleged letters issued by the respondent nos.1 and 2 are illegal and prayers (e) and (f) are for perpetual injunction and the rest prayers are for damages and other reliefs. Considering the prayers of the petitioners in the plaint, this Court finds that because of two (2) prayers, the total claim made by the petitioners in the plaint cannot be ignored.

44. Considering the above, this Court finds that the petitioners have made out a *prima facie* case and balance of convenience and inconvenience are in favour of the petitioners and at this stage, an interim order is not granted, the petitioners will suffer irreparable loss and injury.

45. In view of the above, the respondent nos. 1 and 2, their men, agents, servant and assigns are restrained from giving any effect or further effect to the notices dated 28th May, 2025; 8th June, 2025; 13th June, 2025 and 16th June, 2025 till 17th September, 2025. It is made clear that this Court has passed the interim order as the application filed by the respondent no.1 under Section 7 of the IBC is not admitted till date. The Learned Tribunal is free to take decision with regard to admission of the application filed by the respondent no.1 under Section 7 of the IBC.

46. Though the respondent nos. 1, 2 and 3 are already appearing in the matter but other respondents have not entered appearance, the petitioners are directed to issue notices upon the respondent nos. 4 to 6 immediately and to file affidavit of services on the returnable date.

47. The respondents are directed to file affidavit-in-opposition within two weeks, reply, if any, within a week thereafter.

48. List the matter on 17th September, 2025 under the heading "New Motion".

(Krishna Rao, J.)

p.d/-