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The Liability of Corporate Guarantee for Debt Recovery Procedure in: BRS Ventures Investments Ltd. Vs. SREI Infrastructure Finance Ltd. and Ors.

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ABSTRACT

The case involved a question upon the duties of corporate debtor to its creditors implicating a coherent set of conceptually distinct moral principles governing the conduct of debtors towards their creditors. Furthermore, the arguing contention whether guarantor's liability stands separate and distinct from principle debtor, for such condition gives creditors liberty to file independent suit against either of them rather bringing them under same discord.

The interest of a creditor in corporate debtors' business affairs, suffering from financial difficulty, can face adverse consequences for improper participation in management of the corporate debtor, the creditor shall be responsible for losses accumulated on account of such participation. However, the case of BRS Ventures Investment Ltd. Vs. SREI Infrastructure Finance Ltd. And Ors., the factual statement showed no such intervention by financial creditor, to the corporate debtor, neither showing contention for improper participation, stating the corporate debtor shall not file suit for damages arising out of any such suit of debt-repayment.

The duty of contractual obligation in notes of guarantee requires reasonable efforts to minimize losses by legally binding the borrower in-confidence, for whenever intervening events impede contractual objectives of debt restructure or overdue, recognizing confidence the party's responsibility inextricably linked to repayment of debt according to his contractual obligation as key step fitting towards environment for perfect creditor, debtor, and guarantor.

Keywords: *corporate guarantee, corporate debtor, financial creditor, debt repayment.*

I. INTRODUCTION

The case involved a question upon the duties of corporate debtor to its creditors implicating a coherent set of conceptually distinct moral principles governing the conduct of debtors towards

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their creditors.² (Clark, 1977) Furthermore, the arguing contention whether guarantor's liability stands separate and distinct from principle debtor, for such condition gives creditors liberty to file independent suit against either of them rather bringing them under same discord.

The interest of a creditor in corporate debtors' business affairs, suffering from financial difficulty, can face adverse consequences for improper participation in management of the corporate debtor, the creditor shall be responsible for losses accumulated on account of such participation.³ (Douglas-Hamilton, 1975) However, the case of BRS Ventures Investment Ltd. Vs. SREI Infrastructure Finance Ltd. And Ors., the factual statement showed no adverse intervention by financial creditor, to the corporate debtor, neither showing contention for improper participation, stating the corporate debtor shall not file suit for damages arising out of any such suit of debt-repayment.

On account of default, the liability of corporate debtor obliges for full-payment of dues, by invoking the furnished corporate guarantee by financial creditor, for it open for creditors to move against guarantors as the liability stands co-extensive. The appeal filing before Supreme Court reiterated the applicability of financial creditor to pursue both parties-the corporate debtor and corporate guarantor independently for the settlement with guarantor does not extinguish remaining debt payable by the principle debtor⁴. (Jha, 2024)

II. FACTUAL BACKGROUND

Gujarat Hydrocarbon & Power SEZ Ltd., a corporate debtor approached for grant of loan from, SREI Infrastructure, the financial creditor of Rs. 100 Cr. for setting up SEZ project, for mortgage of leasehold land, and pledge of shares including a corporate guarantee furnished by ACIL, of whom the corporate debtor is a subsidiary, on January 5th, 2011. On default the financial creditor filed for Debt Recovery Tribunal, where-in on 2015, 'debt repayment and settlement agreement' was executed to which financial creditor, corporate debtor, and ACIL (the guarantor) were parties. The corporate guarantee was invoked by financial creditor counter to the default committed by the corporate debtor, under Section 128⁵ of Indian Contract Act, 1872, the Financial Creditor has right to recover debt from either principal borrower or the guarantor.

The creditor filed a claim of Rs. 648.81 Cr., nevertheless, Interim Resolution Professional

² Clark, R.C. (1977) 'The duties of the Corporate Debtor to Its Creditors', *Harvard Law Review*, pp. 505–562.

³ Douglas-Hamilton, M.H. (1975) 'Creditor Liabilities Resulting from Improper Interference with the Management of a Financially Troubled Debtor', *The Business Lawyer*, pp. 343–365.

⁴ Jha, S. (2024) 'Corporate Guarantor v. Principal Debtor: Supreme Court Clarifies Distinct Liabilities under IBC', *Metalegal Advocates*

⁵ Indian Contract Act, 1872, § 128

admitted Rs. 357.29 Cr. as claim, where-in Rs. 241.27 Cr. was reassessed inclusive of principal amount of Rs. 100 Cr., additionally, Rs. 38.87 Cr. was paid by the appellant against claim of Rs. 241.27 Cr. in full and final settlement of dues as submitted in resolution plan.

Subsequent claim by Financial Creditor, of Rs. 1428 Cr. was initiated curtailing to billable loss under loan facility of Rs. 100 Cr., which was appealed against by the suspended director of corporate debtor of the order of adjudicating authoring. However, by the judgement of 'NCLAT' both appeals have been dismissed.

The plea initiated by Corporate Debtor stood rejected by 'NCLT', leading to proceeding of 'CIRP' against. Yet the appeal stood to 'NCLAT' which stand dismissed. Thus, the matter was brought before Supreme Court, where the contention was held the Financial Creditor's pursuance of remaining debt amount from principle debtor after partial settlement of guaranteed amount with the guarantor, stand negated.

(A) Issue raised

The major issue raised in the present case contends with fragment of liability in contractual corporate guarantee, as according to 'Indian Contract Act'. The following issues are:-

1. Whether payment of lesser amount entitle surety to right of subrogation, besides, the discharge of corporate debtor from debt obligation if the part-payment has been made by the surety?
2. Whether the financial creditor can move separately against corporate debtor and corporate guarantor, in repayment of dues? For part-payment by guarantor does not discharge corporate debtor of his liability.
3. Whether guarantor's liability stands discharged due to proceedings of approval of resolution plan, or the proceedings of liquidation or insolvency? Whether such liability stands distinct or co-exist with principal debtor?

III. SUBMISSIONS OF APPELLANT & RESPONDENT WITH CONTENTION OF INTERVENERS

The appellant stated that under Section 63 read with section 41 of Indian Contract Act, stands that upon receipt of Rs. 38.87 Cr from guarantor, the debt-payable stands discharged,⁶ voicing Section 140 of Indian Contract Act, the acceptance of lesser amount by creditor under complete satisfaction of dues paid by the surety, entitled surety to the right of subrogation, for the surety

⁶ Godha and Ors. v Mir Nawab Himayatalikhan Asamjah (1963) 2 SCR 168

is entitled to all the rights of creditor against principle debtor.⁷

The respondent invited judgement of Lalit Kumar Jain v. Union of India and Ors.⁸ which lays down that creditors can move against personal guarantors, let alone corporate guarantors for the liability of guarantor is co-extensive with corporate debtor. The involuntary process or due to liquidation or insolvency proceedings does not absolve corporate guarantors of their liability, which arises out of an independent contract. The entire outstanding amount stood payable by corporate debtor was not recovered by ACIL, letting to no bar on financial creditor to proceed against respondent for remaining amount.

The Contention of **Intervenors** states guarantor's liability stands separate and distinct from principal debtor relying on judgement of Punjab National Bank Ltd. v. Shri Vikram Cotton Mills⁹, as the submission states that Section 140¹⁰ of contract act will be applicable only when guarantor pays all that is liable under contract of guarantee, it is stated the guarantor only made part payment of the debt. Thus, Section 140 will not be applicable.

IV. ANALYSIS OF DEFERRED OBLIGATIONS OF GUARANTOR AND/OR DEBTOR

The act or omission on creditor's part, regards discharge of principle debtor with surety stands discharged for if the contract stipulates, under Section 137 principle not necessary for creditor to first sue principal debtor or adopt a remedy, if there is omission to that, discharge of surety stands incompatible. *The act of creditor making partial recovery from guarantor does not pardon corporate debtor of its financial obligations*, for the upholding liability of corporate debtor's guarantor stand same as corporate debtor's liability, unless otherwise written in contract, as stated in Section 128¹¹ Indian Contract Act. Reliance was placed upon the decision of the Supreme Court case, Maitreya Doshi v. Anand Rathi Global Finance Ltd. and Anr.¹²

This means that proceeding to recover debt against principle debtor, the creditor can proceed against the surety, unless there is a contract to contrary, even if the creditor discharges one surety, it will not amount to discharge of other surety.

For the release of corporate debtor was not stipulated in the Resolution Plan¹³ which stands binding upon corporate debtor, its employees, to whom a debt respect of payment of dues arising under law in force, such authorities, guarantors, and other stakeholders' part of the resolution

⁷ Shib Charan Das v Muqaddam and Ors. (1936) ALL 62

⁸ Lalit Kumar Jain v Union of India (2021) 9 SCC 321

⁹ Punjab National Bank Ltd. v. Shri Vikram Cotton Mills (1970) 1 SCC 60

¹⁰ Indian Contract Act, 1872, § 140

¹¹ Indian Contract Act, 1872, § 128

¹² Maitreya Doshi v Anand Rathi Global Finance Ltd. and Anr. (2022) INSC 1004

¹³ This Resolution Plan as read under Section 31 of Insolvency and Bankruptcy Code.

plan.

V. RATIO DECIDENDI

The liberty of Financial Creditor stands privilege to file separate applications for debt-recovery against corporate debtor and corporate guarantor, for the applications can filed concurrently as well. The recovery of part amount guaranteed by creditor from surety and agreement of non-pursuance against surety for balance does not extinguish the remaining debt payable by the principal borrower for the creditor can proceed against the principal borrower to recover the balance amount.

The existence of variance in contract without surety's consent, under Section 133, can discharge surety only when the variance is made between principal debtor and creditor, with Section 134 contemplating a situation for release of principal debtor by contract between creditor and principal debtor, where-in the surety also stands discharged.

The court has indicated, that an involuntary act of principal debtor leading to loss of security, would not absolve guarantor of its liability, for an unequivocal guarantee, such liability of the guarantor continues and the creditor can realise the same from the guarantor in view of the language of section 128¹⁴ of Indian Contract Act, 1872, as there is no discharge under Section 134¹⁵ of the said Act.¹⁶

(A) Supreme Court's Decision

Correspondingly the compromise settlement between creditor and surety where principal borrower is not a consenting party, the borrower's liability remains unaffected. The provisions show involuntary acts of principal borrower does not discharge the surety.

The corporate guarantee, in the facts of this case, states the liability of guarantor was to extent of entire amount repayable by corporate debtor to the corporate debtor. The sum payment of Rs. 38.87 Cr to Financial Creditor under resolution plan of corporate guarantor-ACIL shall not extinguish liability of corporate debtor to pay entirety of the amount under deductible loan transaction to be paid on behalf of the corporate guarantor in terms of the resolution plan. The rest amount payable, financial creditor had to take a haircut because of involuntary process by operation of law.

Accordingly, subrogation extends to amount recoverable from surety, notwithstanding any provision the amount shall be paid on behalf of corporate guarantor, and corporate debtor by

¹⁴ Indian Contract Act, 1872, § 128

¹⁵ Indian Contract Act, 1872, § 134

¹⁶ Maharashtra SEB v Official Liquidator (1982) 3 SCC 358

resolution applicant. The right stands with financial creditor to recover the balance debt payable by the corporate debtor, no way distinguished.

VI. CONCLUDING REMARKS

The duty of contractual obligation in notes of guarantee requires reasonable efforts to minimize losses by legally binding the borrower in-confidence, for whenever intervening events impede contractual objectives of debt restructure or overdue, recognizing confidence the party's responsibility inextricably linked to repayment of debt according to his contractual obligation as key step fitting towards environment for perfect creditor, debtor, and guarantor.¹⁷ (Charles J. Goetz, 1983) The guarantee stands joint and several with borrower, for awarding the creditor pursuit of both the interest.

The present anecdote states the variation in terms and obligations create a scenario for differences which halt the basic tenets of credit operation for funding projects in scale of industries. However, the obligations arising out of such agreement is held profound in core of law and shall be enforced for competence in contractual duty and operation to evade practices unscrupulous in business endeavour.

¹⁷ Goetz, C.J. and Scott, R.E. (1983) 'The Mitigation Principle: Towards a General Theory of Contractual Obligation', *Virginia Law Review*, pp. 967–1024.