Present: Sri Srikumar Goswami (JO Code: WB00714)
Judge, Commercial Court at Alipore
Title Suit 07 of 2019
CNR no. WBSP18-000022-2019

Order No. 47
18.07.2022

In the matter of :
Suit for declaration, mandatory injunction valued at Rs. 12 Crores.
And
In the matter of :
VISA Infrastructure Ltd.
Vs.
In the matter of :
State Bank of India & 21 Ors.

ORDERED

The day has been fixed for passing the Order in respect of two Interlocutory Applications being no. 135 of 2020 and 136 of 2022 respectively both correspond to under *Order VII Rule 11 of the Code of Civil Procedure, 1908* (hereinafter referred to as the CPC) for rejection of the plaint relating to this instant suit registered as *Title Suit 07 of 2019*.

Plaintiff, being Visa Infrastructure Limited had instituted the instant Title Suit before the Learned Civil Judge, Sr. Division in the District Court at Alipore on 21st December, 2017, thereafter the said suit was rolled out before this Commercial Court for adjudication. On the said suit Plaintiff prayed for reliefs which will be evident from the prayer portion of the plaint as made out by the plaintiff that declaration, permanent injunction and mandatory injunction in respect of Corporate Guarantee admittedly executed by the Plaintiff with regard to discharge of its liabilities out of the said Corporate Guarantee which is the cynosure of the present suit.

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Ld. Counsel on behalf of the Plaintiff files hazira.

In this instant title suit there are 22 Defendants. Among all the Defendants, Defendant no. 1 and Defendant no. 11 are filed the two separate interlocutory applications under *Order VII Rule 11* for rejection of the plaint pertaining to this present title suit. Therefore, this Court has clubbed the two applications and decided to adjudicate by this present Order.

THE COURT: Plaintiff of this apropos Title Suit filed this suit for granting some very prayers as exposited in the impugned plaint. During the propagation of intrinsic Suit, as said earlier, Defendant nos. 1 and 11 have filed these instant interlocutory applications *being no. 135 of 2020 and 136 of 2020 under Order VII Rule 11 of CPC*. Therefore, this Court is in the position to dispose of these present interlocutory applications by penning this Order before pursuing to the other applications, if any, and/or *per se* title suit.

1. After going to pen this present application it is very indispensible to enumerate the brief introduction of the spate of Defendants as well as the Plaintiff. In this present case Plaintiff, *VISA Infrastructure Limited*, (hereinafter referred to Visa Infrastructure), filed this present suit against all the Defendants. Among the all Defendants, Defendant no. 1, State Bank of India and Defendant no. 11, Punjab National Bank (formerly known as Oriental Bank of Commerce) filed these present interlocutory applications.

2. As per the proviso of *Order VII Rule 11 of the CPC* is concerned, the present applications must and/or shall be revolved around the plaint pertaining to this present suit. Therefore, *in limine*, brief facts that vexed the Plaintiff to sue before this Court as enumerated in the said plaint are to be anticipated at the time of disposal of the present interlocutory applications under *Order VII Rule 11* of CPC.

3. *Conspectus of facts of the case exposited in the plaint:* Plaintiff was and still now is an existing company belongs to the Visa Group of Companies. Visa Steel Limited, the Defendant no. 22 herein, had availed credit facilities from various lenders, the Defendant nos. 1 to 21. Pursuant to the request of the Defendant no. 22 to restructure its debt, a restructuring proposal was approved under the Corporate Debt Restructuring (CDR) Cell. As per the CDR system in favour of the Defendant no. 22 the Plaintiff was required to furnish a corporate guarantee with a negative lien on its property being a building popularly known as "VISA HOUSE". It is also stated that guarantee as agreed would be valid till the Defendant no. 22 brings in additional equity of Rs. 125 crores over and above Rs. 325 crores. By reason of the aforesaid and at the request of the Defendant no. 22 a Deed of Guarantee dated 19th December, 2012 was executed by the Plaintiff in favour of the Defendant nos. 1 to 21. In the said Deed of Guarantee among other

things it is included that of creating a negative lien in favour of the borrower being the Defendant no. 22 bring in additional equity of Rs. 125 crores over and above the promoters' contribution of Rs. 325 crores in the Defendant no. 22 company as envisaged in the CDR package. It was decided to merge Visa Bao Limited with that of the Defendant no. 22, under a Scheme of Arrangement under Sections 391-394 of the then existing Companies Act, 1956. The said merger of Visa Bao Limited with the Defendant no. 22 was also approved in the Corporate Debt Restructuring dated 31st December, 2014 and in this context a copy of the business organizations proposal approved under the CDR system dated 31st December, 2014 by the lenders Defendants. Pursuance to and in terms of the approval of CDR Empowered Group dated 31st December, 2014, a Common Loan Agreement was executed, inter alia, between the Defendant no. 22 and the various lenders being the Defendant nos. 1 to 21 with the Defendant No. 1 being the monitoring institution on behalf of the lenders. In the meantime and subsequent to the CDR approved of the Business Reorganization Proposal on 31.12.2014 by the lender Defendants and pursuant to a Scheme of Amalgamation duly made under Sections 391 to 394 of The Companies Act, 1956, one of the Visa Group Companies, Visa Bao Limited merged with the Defendant no. 22 and therefore, the business value of Visa Bao Ltd. as included in the books of account of the Defendant no. 22 was to be treated as infusion by way of additional equity by reason of merger in terms of restructuring package approved by the Corporate Debt Restructuring Cell. By reason of the merger as aforesaid resulting in taking over the assets and liabilities of *Visa Bao Ltd. (VBL)* with that of the Defendant No. 22 assets of an amount of about 575 crore was infused in the Defendant no. 22. The sanctioning of the Scheme thus resulting in inflow of total assets of about Rs. 575 crore and upon adjustment of liabilities of Visa Bao Ltd. taken over by the Defendant no. 22, there was a net surplus of about Rs. 460 crore which was credited to the capital reserves and by way of surplus on amalgamation. The Plaintiff states pursuant to the merger as above the business value of VBL as included in the books of account and valued at Rs. 460.146 Crore and as reflected in the audited financial statement of the Visa Bao Limited, became an infusion by way of additional equity by reason of merger in term of the restructuring package approved by the CDR EG vide letter dated 27th September, 2012. In view of the aforesaid, by a letter dated 25th October, 2017 written by the Plaintiff to the Defendant no. 1, representing the Defendant nos. 1 to 21, by Plaintiff, inter alia, sought for discharge of the obligations of the Plaintiff as a guarantor on the grounds that the condition envisaged in the various documents of guarantee had

been duly fulfilled. By an email dated 18th November, 2017 written by the Defendant no. 1 in response to the letter of the Plaintiff dated 25th October, 2017 the Defendant no. 1 informed the Plaintiff about its non acceptance of the situation and sought an explanation as to how infusion of Rs. 125 crore was made in the Defendant no. 22 consequent to merging by *Visa Bao Ltd. with Visa Steel Ltd.* being the Defendant no. 22. By an email dated 24th November, 2017, the entire situation as aforesaid was duly explained to the Defendant. By a letter dated 30th November, 2017, the Defendant no. 1 alleged that the merger did not result in any additional cash infusion and refused to accept the contention in the aforementioned letters dated 25th October, 2017 and email dated 24th November, 2017. Thereafter several correspondences were exchanged between the Plaintiff and the Defendants. But, Defendants and the Plaintiff all were not able to find a consensus stage and as a result Plaintiff has filed this present suit.

4. Defendants by filing interlocutory applications under *Order VII Rule 11 of the Code of Civil Procedure, 1908* argue that the instant suit is deserved to be dismissed as:

a) The subject matters of the said application and prayers for releasing the Plaintiff from its obligations to the Defendants no. 1 to 21 are the very matters where the D.R.T. has jurisdiction accordingly, the said application is within the scope and meaning of *Section 18 of the RDB Act* and *Section 34 of the SARFAESI Act, 2002.* The averments of the said two Sections are hereby penned verbatim:

The *Section 18 of the RDB Act, 1993* provides- **Bar of Jurisdiction.**—On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17.

The *Section 34 of the SARFAESI Act, 2002* provides- **Civil court not to have jurisdiction.**—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

b) At the time of filing of application under *Order VII Rule 11* of *the Code of Civil Procedure, 1908* one NCLT Proceeding under Section 7 of IBC filed by the State Bank of India which was being numbered as *CP(IB) No. 23/KB/2018* was pending before the NCLT, Kolkata. It is also said by the Defendants that the said application was decided against the Bank. The Defendant no. 1 filed an appeal before the NCLAT, New Delhi and the matter is pending there for adjudication before the Chairperson.

c) The Oriental Bank of Commerce has filed an original application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 before the DRT-I, Kolkata bearing no. *OA/808/2018* against the Borrower M/s Visa Steel Ltd and the Plaintiff has been impleaded as the Defendant no. 6 to the said original application for enforcement of the Guarantee Agreement executed by the Plaintiff amongst others and the said original application is pending before the said Tribunal.

d) The crux of the matter is the dispute as to whether the Plaintiff is liable for the payment of the dues of Visa Steel Ltd. to the Defendants or not. As regards Defendants refer the Section 2(g) of the *Recovery of Debts and Bankruptcy Act, 1993* which deals with the 'debt' and defines 'debt' and said provision contained as follows: Debt means any liability (inclusive of interest) which is claimed as due from any person 4[or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)] by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application 5[and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities.

e) Admittedly, the Plaintiff executed the agreement of guarantee in favour of the leading bank, the Defendants herein and the State Bank of India and Oriental Bank of Commerce now amalgamated with Punjab National Bank, which filed application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 for enforcement of the said Agreement of Guarantee and as such the Plaintiff is the debtor as defined in Section 2(g) of the Recovery of Debts and Bankruptcy Act, 1993 and the relation between the Plaintiffs and the Defendants are creditor and debtors.

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f) The issue is whether the Plaintiff continues to be a Guarantor or not is also to be adjudicated solely by the Debt Recovery Tribunal, in view of the bar under *Section 18 of the Recovery of Debts and Bankruptcy Act, 1993.*

g) Defendants also states that the liability of the debtors and guarantor is co-extensive and as the claim of the bank has not been satisfied and admittedly the Defendant no. 1/ bank the leading bank has already invoked the Guarantee Agreement for recovery of the dues of the Defendant's Bank and proceeded for recovery of dues of the bank

against the Principal borrower Visa Steel Limited and the Guarantors and one of which is the Plaintiff and Principal borrower, so, the Guarantors are equally liable to pay the dues of the bank. Therefore, this Court has lack of jurisdiction to entertain the present suit as the DRT is sole authority to determine the present dispute enumerated in the said suit. Ld. Counsel of the Defendant no. 11 refers a decision of the Hon'ble Supreme Court of India in the case of *Union of India vs. Delhi High Court Bar Association* reported in AIR 2002 Supreme Court 1479.

5. Plaintiff's actual line of defence in respect of the interlocutory applications being nos. *135 of 2020 and 136 of 2020* is:

a) That the reliefs as prayed for before this Court is outside the jurisdiction of the Debts Recovery Tribunal as well as NCLT and that the Tribunals exercising powers under the RDDB Act and SARFAESI Act and/or IBC are not empowered to grant reliefs to Plaintiff as prayed for before this Court. It is a matter of record that the instant suit was instituted by the Plaintiff on 21st December, 2017. As on 21st December, 2017 there were no proceedings initiated by the bank before the DRT or elsewhere. The Plaintiff states that the application filed by any bank before the DRT post dated the instant suit as it was filed sometime in November, 2018 before the DRT.

b) The only reliefs that can be claimed by the Plaintiff before the DRT is in the nature of set off and/or counter claim to the proceedings instituted by the Defendants. As regards Plaintiff refers the Sub-section 5,6,8 of Section 19 of the Debts and Bankruptcy Act, 1993, it is apposite to refer the indictments of the said Sections hereinbelow:

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Section 19(5): *The defendant shall within a period of thirty days from the date of service of summons, present a written statement of his defence of summons, present a written statement of his defence including claim for set off under sub-section (6) or a counter claim under sub-section (8), if any and such written statement shall be accompanied with original documents or true copies thereof with the leave of the Tribunal, relief on by the Defendant in his defence.*

Section19(6): *Where the defendant claims to set off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set off along with original documents and other evidence relied on in support of the claim of set off in relation to any ascertained sum of money, against the applicant.*

Section 19(8): *A defendant is an application may, in addition to his right a pleading a set off under sub-section (6), set up, by way of counter claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application, but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter claim is in the nature of a claim for damages or not.*

c) It is stated by the Plaintiff that from above averments of the relevant Sections it is clear that only reliefs available to Plaintiff before the DRT is in the nature of set off and/or counter claim and such counter claim, if any can be in the nature of claim for damages.

d) Plaintiff has prayed for declaratory reliefs and other consequential reliefs in terms of *Section 34 of the Specific Relief Act, 1963*. It is apposite to refer hereunder:

34. Discretion of court as to declaration of status or right.*—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Explanation.—A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and whom, if in existence, he would be a trustee.*

Therefore, the reliefs sought for only be entertained by the Civil Court and not by DRT.

e) It is also stated by the Plaintiff that the proceeding under Section 7 of the IBC, 2016 before the NCLT, Kolkata Bench, has been contested by the Plaintiff and the said proceeding was dismissed. Thereafter, Defendant has preferred an appeal before the NCLAT, New Delhi being appellate forum and the appeal is presently pending adjudication. It is contended by the Plaintiff that the IBC does not contain any provisions by which the Plaintiff can institute any proceedings against the Defendant before the NCLT and/or NCLAT. It is evident that the NCLT or NCLAT does not have powers to grant the reliefs as prayed for by the Plaintiff in the instant suit. So, the present applications under *Order VII Rule 11 of CPC* should be rejected.

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6. The present interlocutory applications correspond to *Order VII Rule 11 of the CPC*. While an application is singularly aspect the *Order VII Rule 11 of the Code*

of Civil Procedure, the Court is, *prima facie*, bound to see whether the case on hand falls within the six limbs stated in the said order or not. If the suit is not falling under any of those categories, the plaint cannot be rejected. (*V. Bragan Nayagi Vs. R.R. Jeyaprakasam*, reported in *1 2015(4) MLJ 538*). The six limbs are apposite to set out hereunder:

> *The plaint shall be rejected in the following cases:—*
>
> *(a) where it does not disclose a cause of action;*
>
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
>
> *(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
>
> *(d) where the suit appears from the statement in the plaint to be barred by any law;*
>
> *(e) where it is not filed in duplicate;*
>
> *(f) where the plaintiff fails comply with the provision of Rule 9.*

(**Emphasis added**)

7. As per the proposition of the Hon'ble Supreme Court of India laid down in various decisions it is clarified that the Court, while dealing with such an application seeking rejection of a plaint, ought to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon. In this regard, it is also clarified that while making such a determination, Courts would have to disregard the pleas taken by the Defendant(s) in the Written Statement and application for rejection of the plaint on merit. Hence, the SC clarified that while determining any application filed under *Order VII Rule 11 of CPC*, the Courts should restrict itself to the plaint and should not go into the delineated facts as provided under the Written Statement or even the application filed under *Order VII Rule 11*. In the case of *Liverpool and London S.P. and I Association Ltd. vs. M.V. Sea Success*, which, *inter alia*, provides that whether the plaint discloses a cause of action or not is essentially a question of fact, however, whether it does or does not must be found from the reading of the plaint itself during which the averments made in the plaint in their entirety must be held to be correct. In other words, the plaint must be construed as it stands, without addition or subtraction of words. Therefore, it is very clear that when a Court goes to adjudicate an *Order VII Rule 11* application, the Plaint annexed with the documents will be the sacrosanct and if the Plaint does not disclose a cause of action {*as per clause (a) of the said Order*}, or that the suit is barred by any law {*as per clause (d) of the said Order*}, the Court has

no option, but to reject the Plaint (*Dahiben vs. Arvindhai Kalyanji Bhansai reported in 202 SCC Online 563 para 12.10*).

8. A comprehensive perusal of the present applications as well as hearing of the parties to this present proceeding, it is conspicuous to this Court that Defendants filed these present interlocutory applications mainly resorting to *clause (a)* and *clause (d)* of the *Order VII Rule 11* and all other residual clauses as enumerated in the said Order are otiose to aspect of instant applications.

9. It is reiterated that it is well settle golden proposition in law that at the time of the considering an application for rejection of plaint, Court has to confine itself only to averments made therein. Whether the Plaintiff will succeed or not is a matter of trial and not the subject matter of enquiry under *Order VII Rule 11*. In this present suit Plaintiff's main objection are revolving around the Deed of Guarantee dated 19th December, 2012 executed by the Plaintiff in favour of the Defendant nos. 1 to 21. Plaintiff's claim in the present suit is that the Plaintiff is entitled to seek a declaration as there has already been an infusion of Rs. 125 crore in terms of the various guarantee documents over and above the infusion of Rs. 325 crore which has already been admitted and acknowledged and as such the Plaintiff is entitled to be discharged as a guarantor in terms of the various guarantee documents including that of the revival letter dated 29th October, 2015. Now, the question is whether the DRT and/or NCLT has empowered to fulfill the reliefs as prayed for by the Plaintiff in this present suit.

10. As far as the NCLT's proceeding is concerned it is admitted by all parties that an application under Section 7 of the IBC has been filed by the Defendants which is dismissed and then Defendants moved to the NCLAT against the Order of the NCLT and till date when this Court is penning the present Order any Order from the NCLAT has not yet been brought by any party to this Court. Although, it is well settled that mere filing of an application under Section 7 of the IBC before the NCLT does not mean right to file other cases in respect of any statutory relief, before any civil court will be barred when anybody does not know what will be the future of the said Section 7 application, whether the moratorium will be granted or not. Therefore, it is to be stated that at the primordial stage of a Section 7 application does not build wall before the procedural progression of other applications before any civil Court.

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11. Now, the question is whether the DRT has the jurisdiction to make up the claim as prayed for by the Plaintiff in this present case. The Debts Recovery Tribunal and Debts Recovery Appellate Tribunal were established under the Act of the Recovery of Debts and Bankruptcy Act, 1993 with the specific objective of providing expeditious adjudication and recovery of debts due to Banks and Financial Institutions. In this suit Plaintiff gave a guarantee to the Defendants in terms of some conditions and now Plaintiff alleges that the condition is fulfilled so Plaintiff's entitlement as guarantor should be discharged by the Defendants. It is also to be noted here that Defendants started to approach to the DRT and NCLT after filing of the present suit before this Court. The prayers of the present suit are a nature of declaratory reliefs and other consequential reliefs in terms of the *Section 34 of the Specific Relief Act, 1963.*

12. This Court first of all says that the no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter on which NCLT or NCLAT has jurisdiction under the IBC. However, it is qualified that the bar would be only in respect of such matters over which NCLT or NCLAT could exercise jurisdiction under the IBC. Referring to Section 63 as a typical ouster clause, this Court relied upon the judgment of the Constitution Bench of the Hon'ble Supreme Court of India delivered in the case of *Dhulabhai & Ors. vs. State of M.P. & Ors.*[1] to contend that such clauses have to be strictly construed, as the ouster of jurisdiction of a civil court, in light of Section 9 of the CPC, is not to be casually or lightly inferred. Therefore, he contended that operative part of Section 63 that will determine whether or not the jurisdiction of this Court stood ousted depends upon interpretation of whether or not NCLT or NCLAT have jurisdiction under the IBC to grant all the six prayers prayed for by the plaintiffs in the present suit.

13. As regards the ground of lack of subject matter jurisdiction, this Court states that if the suit is to be rejected at its very threshold on the grounds of lack of subject matter jurisdiction, then it must be on the grounds that each and every single prayer falls within the jurisdiction of NCLT to grant. In other words, all the six prayers ought to be flowing from issues that NCLT has jurisdiction over or, to paraphrase the language of Section 231 of the IBC, is empowered by or under the IBC to pass orders on, or, should be flowing from matters that the NCLT is empowered to determine. A comprehensive perusal of the all six

[1] Reported in AIR 1968 SC 78.

prayers, this Court agrees with the contention of the Plaintiffs that NCLT cannot grant declaratory relief, its proceedings being summary in nature, as acknowledged by NCLT itself in diverse judgments, as well as NCLAT, and which view of NCLAT is in consonance with the view expressed by the Hon'ble Supreme Court earlier. In the case of *Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation*[2], the Hon'ble Supreme Court of India settled two propositions, namely, that Tribunals are not Court and therefore, they lack jurisdiction empowerment to grant declaratory relief, which can only be granted by a Civil Court, but especially not in summary proceedings of Tribunals. As regards proceedings under Section 7 of the IBC being summary in nature, this Court is in agreement with the views expressed in the following Judgments/Orders: a) *Edelweiss Asset Reconstruction Company Ltd. vs. Margra Industries Ltd.* arising out of the *Company Petition (IB) No. 866 (PB)/2018*, the relevant paragraph no. 19 is reproduced hereunder:

> *"19.....The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application."*

b) *State Bank of India vs. Essar Steel India Ltd.* arising out of the *Company Petition (IB) No. 40/7/NCLT/AHM/2017*, the relevant paragraph no. 53 is set out hereunder:

> *"53. Hence, for the purpose of Insolvency Resolution Process viz, to clarify to the Resolution Applicants and in view of Section 60(5), this Authority has the jurisdiction to decide the claims of Corporate Debtor in a summary manner and give its findings to enable the Resolution Professional to prepare Information Memorandum, to attract potential Resolution Applicants and to give correct picture to Resolution Applicants, but not to grant declaratory relief to Corporate Debtor, more so when a civil suit is pending relating to Cancellation Deed and it view of interim order passed by Hon'ble High Court of Kolkata (sic) restraining rewinding of BTA ...."*

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This Court notes with approval the contention raised by the Plaintiffs in the Written Notes of Arguments dated 08.02.2022 that thereafter, in alignment with this ratio/dicta laid down by the Hon'ble Supreme Court of India delivered in the case of Nahar Industrial Enterprises Ltd. (supra) by a judgment delivered by NCLAT on 29.08.2018 in *Company Appeal (AT) (Insolvency) No. 213 of 2018* titled *V.T. Hemantraj (shareholder of Rajkumar Impex (P) Ltd.) vs. Stanbic Bank Ghana Ltd. & Anr.*, it was categorically held by NCLAT that NCLT cannot grant

[2] Reported (2009) 8 SCC 646.

'declaratory relief' under the IBC at the stage or Section 7. This shows that NCLAT has held that NCLT is not 'empowered' to grant such a 'declaration'. Therefore, it follows that the same reasoning would also apply to NCLT's lack of empowerment to grant a declaration that the Deed of Guarantee dated 23.09.2016 is *void ab initio* as if *non est*, as such challenge can only be raised before the Court of competent jurisdiction. Hence, the jurisdictional challenge raised by the Defendants on the grounds of a bar under Section 63 read with Section 231 of the IBC, read with Section 430 of the Companies Act, 2013 is rejected.

14. Defendants raised the objection in their *Order VII Rule 11* application that this suit is liable to be rejected as it is barred by particularly the *clause (d)* of the *Order VII Rule 11*. First of all it is to be said that *Order VII Rule 11(d)* of the CPC has limited application (*Kamala & Ors. vs. K.T. Eshwara Sa & Ors*[3]). A perusal of the documents as well as the hearing of the parties to this proceeding, it is pertinent to mention here that this suit is very maintainable in this Court and this stage is inchoate to determine all the issues as raised by the Plaintiffs in this suit and if this *Order VII Rule 11* application is allowed at this stage, the prayers of this present suit will not be entertained and as such gross injustice will prevail over.

15. Therefore, from the above delineation it is clear that the instant interlocutory applications being no.*135 of 2022 and 136 of 2022* is devoid of merit and as such the present interlocutory applications are dismissed.

16. There is no Order as to costs.

17. Accordingly, by this Order the interlocutory applications being nos. *135 of 2022 and 136 of 2022* are hereby disposed of. However, at this stage it is directed to frame specific issue whether the suit is maintainable or not at the time of framing of issues.

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18. Post the matter on **9th of August, 2022 at 11:00 A.M.** for fixing the date of first case management.

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[3] 2008(5) MLJ 617: 2008(4) AIR SCW 5364 (SC), paragraph 15.

Both parties are to act on the basis of the downloaded copy of the ordersheet from the Web-site/E-courts-app.

Dictated & corrected by me,

Judge, Commercial Court at Alipore
For districts of South 24 Parganas, Purba Medinipur,
Paschim Medinipur & Jhargram

JUDGE
COMMERCIAL COURT AT ALIPORE

Judge, Commercial Court at Alipore
For districts of South 24 Parganas, Purba Medinipur,
Paschim Medinipur & Jhargram

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