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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS (OS) No. 305/2020 & I.A. Nos. 9227-28/2020

ATUL PUNJ

.....Plaintiff

Through : Mr. Pinaki Mishra, Sr. Adv. with Mr. Siddharth Chechani and Mr. Aditya Dewan, Advs.

versus

UNION BANK OF INDIA & ORS.

.....Defendants

Through : Mr. O.P. Gaggar, Adv. For D-1/UBI.
Mr. Kush Sharma and Ms. Asiya Khan, Advs. For D-2/BOB.
Mr. Rajiv Kapur and Mr. Akshit Kapur, Advs. For D-3/SBI.
Mr. Mayank Bhargava and Mr. Arjun Narang, Advs. For D-6/HDFC Bank.
Mr. Vinam Gupta, Adv. For D-10/L&T Infrastructure Finance Co. Ltd.
Mr. Ajay Monga, Mr. Ateev Mathur and Mr. Amol Sharma, Advs. For D-13/RBL Bank.
Mr. Raghav Chadha, Adv. For D-20.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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12.10.2020

[Court hearing convened via video-conferencing on account of COVID-19]

I.A.No.9227/2020

1. This is an application filed by the plaintiff under Section 151 of the Code of Civil Procedure, 1908 [in short "CPC"] seeking exemption not only from filing original and certified copies of certain documents but also from filing legible copies of dim annexures.

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2. The application is allowed, subject to the plaintiff filing legible copies of dim documents within two weeks from today. Insofar as the filing of original and certified copies of the documents is concerned, the plaintiff will place the same on record as and when he is directed to do so by this Court.

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3. There are several counsels who have entered appearance on behalf of the defendant banks.

3.1 The counsels have taken a position that the instant suit action is not maintainable. In particular, Mr. O.P. Gaggar, who appears on behalf of defendant no. 1/Union Bank of India, submits that the National Company Law Tribunal [NCLT], principal bench, has already admitted the proceedings against defendant no. 20 i.e. Punj Lloyd Limited and appointed a Resolution Professional [RP] in the matter.

3.2 According to Mr. Gaggar, the provisions of Section 14 of the Insolvency and Bankruptcy Code, 2016 [in short “Code”] have been triggered.

3.3 Mr. Gaggar also says that the adjudication upon the personal bank guarantees, which are the subject matter of the instant suit, lies within the domain of the NCLT.

3.4 It is Mr. Gaggar’s say that, therefore, the Civil Court would have no jurisdiction in the matter. In support of this plea, Mr. Gaggar relies upon Sections 60 and 63 of the Code.



4. Mr. Ateev Mathur, who appears on behalf of defendant no. 13 i.e. RBL Bank, says that the proceedings in the Debt Recovery Tribunal (DRT) have been taken out against the principal debtor as well as the plaintiff i.e. the guarantor.

4.1 Mr. Mathur states that these very personal bank guarantees, which are in issue in the present suit, are the subject matter of the defence filed before the DRT.

4.2 It is Mr. Mathur's contention that apart from anything else, this Court ought not to entertain the suit in view of the fact that there could be a possibility of conflict of orders.

4.3 Mr. Mathur, in support of this submission, relies upon the judgement of a coordinate bench of this Court rendered in ***Radnik Exports vs. Standard Chartered Bank***, (2014) SCC OnLine Del 3404.

4.4 This apart, Mr. Mathur also relies upon the provisions of Section 34 of The Recovery of Debts [and Bankruptcy] Act, 1993 to contend that the jurisdiction of the Civil Court is ousted.

5. I must note that Mr. Pinaki Mishra, learned senior counsel, who appears on behalf of the plaintiff, has briefly indicated that insofar as the personal bank guarantee no. 1 is concerned, which is, dated 21.05.2015, it stands discharged as the plaintiff has placed, in the trust and retention account, more than Rs. 1, 062 crores.

5.1 Insofar as the second personal bank guarantee is concerned, which is, dated 23.02.2018, Mr. Mishra submits that the underlying obligations have not been fulfilled by the defendant banks.



5.2 In sum, it is Mr. Mishra's submission that the defendant banks cannot take recourse to the aforementioned personal bank guarantees for recovery of their dues.

5.3 I may also indicate that Mr. Mishra has conceded that in a writ petition filed by the petitioner-plaintiff i.e. W.P. (C) No. 5912/2020, a Division Bench of this Court has granted interim protection in the matter to the petitioner-plaintiff by an order passed today.

6. Given the aforesaid submissions, issue summons in the suit and notice in the captioned application.

6.1 Mr. O.P. Gaggar accepts service on behalf of defendant no. 1 while Mr. Kush Sharma accepts service on behalf of defendant no. 2. Likewise, Mr. Rajiv Kapur accepts service on behalf of defendant no. 3, Mr. Mayank Bhargava accepts service on behalf of defendant no. 6, Mr. Vinam Gupta accepts service on behalf of defendant no. 10, Mr. Ajay Monga accepts service on behalf of defendant no. 13, and Mr. Raghav Chadha accepts service on behalf of defendant no. 20.

6.2 It is, however, made clear that the issuance of summons in the suit and notice in the captioned application will not come in the way of the proceedings pending before the DRT or NCLT. These forums will take their own decision in the matter. The plaintiff is enjoined from using the instant matter as a plank to stall or delay the proceedings pending in these forums.



6.3 As far as this Court is concerned, summons in the suit and notice in the captioned application has been issued to enable the defendant banks to file their written statements and replies and, possibly, articulate, formally, their objection as to the jurisdiction of this Court to entertain and try the instant suit.

6.4 The defendants will file their written statements and replies within four weeks from today. Replications and rejoinders thereto, if any, will be filed before the next date of hearing.

7. List the matter on 21.01.2021.

RAJIV SHAKDHER, J

OCTOBER 12, 2020

Aj/KK

[Click here to check corrigendum, if any](#)

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