

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 431 OF 2007
IN
CHAMBER SUMMONS NO. 103 OF 2007**

Rajen K. Shah,
Sole Proprietor of Kirtanlal & Sons ... Appellant
V/s.
Choksi Tube Co. Ltd. & ors. ... Respondents

Mr. A.B. Amin I/b M/s. B. Amin & Co. for the Appellant.
None for the Respondents.

**CORAM : AKIL KURESHI &
S.J.KATHAWALLA, JJ.
DATE : SEPTEMBER 26, 2019.**

P.C.

1] This appeal is filed by the judgment creditor, who had sought execution of the money decree dated 15.3.2005. The impugned order dated 23.1.2007 came to be passed in such proceedings. The learned Single Judge prevented the appellant from executing the decree against the Directors of the company, who are also the guarantors, on the ground that the company has made an application before the Board for Industrial and Financial Reconstruction (BIFR for short), the decree could not be executed against the company and the liability of guarantors being co-extensive with that of the

company, against the Directors also, the same cannot be executed.

2] We notice that after passing of the said order, the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA for short) has been repealed. The Insolvency and Bankruptcy Code, 2016 is introduced. Even in the successor law, there is provision for the sick companies who are before BIFR to apply to NCLT. One does not know whether in the present case the company has so applied. Further, the Counsel for the appellant submitted that as per the Insolvency and Bankruptcy Code, even if the company is before the NCLT, the guarantors cannot plead protection against the recoveries. All these aspects can best be examined by the learned Single Judge, who is in seisin of the execution proceedings. For such purpose, the embargo contained in the said order dated 23.1.2007 to proceed further in execution against the guarantors is lifted. In other words, the said order is set aside.

3] With these directions, the appeal is disposed of.

(S. J. KATHAWALLA, J.)

(AKIL KURESHI, J.)