Arb.Appln.No.165 of 2022
in A.No.8587 of 2017

SENTHILKUMAR RAMAMOORTHY, J.

Arb.Appln.No.165 of 2022 is filed to raise the order of attachment in A.No.8587 of 2017. The applicants are the guarantors in respect of credit facilities extended by Cholamandalam Investment Finance Company Limited (Cholamandalam) to Anand Teknow Aids Engineering India Limited (the Borrower).

2. The present application is filed by the guarantors by citing the approval of a resolution plan submitted by them before the National Company Law Tribunal, Mumbai (NCLT). The applicants state that the resolution plan was submitted by one of the promoters of the Borrower, Mr.Rakesh Ranjan, and Equilibrated Venture Cflow Private Limited. According to the applicants, the resolution plan takes into account the debts of Cholamandalam. In support of such contention, learned counsel for the applicants refers to clause (e)(i) of the resolution plan and the table set out

thereunder:

S. No.	*Financial Creditors*	*Proposed Payment*	*Upfront Payment*	*Deferred Payment Amount*
1.	Secured Financial Creditor	46.79	6.50	43.50
2.	Unsecured Financial Creditor	6.44	0.32	2.91
Total Payment		**53.23**	**6.82**	**46.41**

2. By referring to clause 22 of the resolution plan, which deals with the continuation of the personal guarantees provided by Rakesh Ranjan, Ragini Ranjan, Niranjan Prasand Sinha and Sharda Sinha, learned counsel relies heavily on the following statement set out thereunder:

> *"The Resolution Applicant proposes that all the personal guarantees of Shri.Rakesh Ranjan, Smt.Ragini Ranjan, Shri.Niranjan Prasad Sinha and Smt.Sharda Sinha shall continue to be the guarantor for the Resolution Debt as envisaged under the Resolution Plan."*

On the basis of the above statement, it is contended that the scope of the personal guarantees provided to Cholamandalam was restricted to the extent of the resolution debt under the resolution plan. Learned counsel for the guarantors submits that the order dated 17.06.2022 of the NCLT should be read in that context. If so read, the liability of the guarantors is whittled down to the extent of the resolution debt.

3. Learned counsel for the guarantors further submits that the guarantors intend to mortgage the properties attached by this Court so as to raise the requisite capital to make the resolution plan a success. Therefore, the raising of attachment is prayed for.

4. Cholamandalam opposes this application on the ground that it is a secured creditor of the Borrower. In relation to the grant of credit facilities, the guarantors had mortgaged their properties in favour of Cholamandalam. Although Cholamandalam agreed to a hair cut, as per the resolution plan, Cholamandalam contends that it is entitled to proceed against the guarantors. In this connection, learned counsel for Cholamandalam relies upon paragraph 23 of the order dated 17.06.2022 of the NCLT, which reads as under:

"23. Further, the Creditors are at liberty to proceed

against the Personal Guarantors. The approval of the Resolution Plan does not bar the creditors to proceed against the Personal Guarantors."

4. According to learned counsel for Cholamandalam, the NCLT granted leave to creditors such as Cholamandalam to proceed against the personal guarantors and further clarified that the approval of the resolution plan does not prevent the creditors from proceeding against the personal guarantors.

5. Clause 22 of the resolution plan provides that the personal guarantees of the four individuals specified therein shall continue to operate in respect of the resolution debt. *Prima facie*, it does not provide that the liability of the personal guarantors is curtailed to the extent of the resolution debt. Paragraph 23 of the order of the NCLT expressly grants leave to creditors to proceed against the personal guarantors by further specifying that the approval of the resolution plan does not bar the institution of proceedings against the personal guarantors.

6. In these facts and circumstances, the guarantors have failed to make out a case to discharge the order at this juncture. However, it should be noticed that the interim order was issued on 06.08.2018. In view of the moratorium which operated until 17.06.2022, Cholamandalam was unable to proceed with arbitral proceedings. Upon the moratorium ceasing to operate, there is no impediment for Cholamandalam to proceed with arbitration. Therefore, the interim order granted earlier is extended by a period of ***60 days*** from today. In case the guarantors intend to vary or discharge the order, it is open to the guarantors to file an appropriate application before the arbitral tribunal. Such application shall be decided by the arbitral tribunal uninfluenced by the observations in this order.

7. Arb.Appln.No.165 of 2022 is disposed of on the above terms.

19.10.2022

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