

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**IA NO. GA/1/2023
IN
EC/180/2023
RAJESH SARDARMAL JAIN
VS
SRI SANDEEP GOYAL & ANR.**

For the decree holder : Mr. Harshit Dhingra (VC), Advocate
Mr. Akash Dutta, Advocate
Mr. Z. Sultan, Advocate

For the judgment debtors : Mr. Krishnaraj Thaker (VC), Advocate
Mr. Rohit Banerjee, Advocate
Mr. Suryaneel Das, Advocate
Mr. Dhruv Chadha, Advocate
Mr. Aditya Mondal, Advocate

Reserved on : 28th August, 2024

Delivered on : 19th December, 2024

ORDER

Bivas Pattanayak, J. :-

1. By the present application, the applicant-judgment debtor no.1 has sought for the following orders:

- "a. An order be passed dismissing the execution application being E.C. No.180 of 2023.*
- b. Stay of the present proceedings being E.C. 180 of 2023;*
- C. An order be passed staying operation of the judgment/decreed dated 23.06.2022 passed by the Hon'ble Federal Court at Sharjah in Case Number SHCAPCICOMS2022/0000133;*
- d. Alternatively, and order be passed transferring E.C. 180 of 2023 before the competent Court having jurisdiction to receive, try and determine the proceeding;*
- e. Ad-interim reliefs in terms of the prayers made herein above;*
- f. Suitable orders as to costs;*

g. Such other and/or further reliefs as the Hon'ble Court may deem fit and proper;"

2. The decree holder in execution proceeding being EC 180 of 2023 has sought to execute the judgment and decree dated 23rd June, 2022 passed by Federal Court, at Sharjah, United Arab Emirates (in short 'UAE').

3. The applicant-judgment debtor no.1 contends as follows. **(i)** The judgment debtor no.2 is a private limited company within the meaning of Companies Act, 1956 and judgment debtor no.1 is one of the directors of judgment debtor no.2. **(ii)** The decree holder filed a suit before the Federal Court, at Sharjah, UAE with the contention that judgment debtor no.2 failed to repay the outstanding monies under the loans and letter of credit availed under the business transaction for facilitation of financial assistance in the form of loans/letters of credit, despite there being assurance to repay on the part of the judgment debtors. **(iii)** The said suit was decreed *ex parte* without affording the judgment debtor an opportunity of hearing and therefore is not sustainable in the eye of law. No notice of the suit for payment of debts at Sharjah was served upon the judgment debtor. **(iv)** All of these causes of action have arisen within the jurisdiction of this Hon'ble Court and thus the Court at Sharjah did not have the territorial jurisdiction. It is further fortified by the certificate from the Ministry of Justice dated 3rd October, 2022 which prohibits the impugned judgment/decreed to be executed in the United Arab Emirates as the same can only be executed in India in view of the fact that the judgment debtors and their properties are situated within the territorial jurisdiction of India. **(v)** The Division Bench of National Company Law Tribunal, Kolkata (in short 'NCLT') was pleased to hold the judgment debtor no.1 as insolvent in view of the fact

that judgment debtor no.2 has committed default in making payment of the cash credit facility along with interest for which personal guaranty was given by him and the Hon'ble Court was also pleased to appoint an insolvency resolution professional for filing a report in this regard. As per Section 96(1)(a) of Insolvency and Bankruptcy Code, 2016 (in short 'IBC'), any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed and, therefore, the impugned proceedings for payment of debt before the learned Court at Sharjah and consequent orders/judgments stood stayed in view of interim-moratorium under Section 96(1)(a) of IBC, 2016. **(vi)** Precisely on such grounds the applicant-judgment debtor has prayed for dismissal of the execution petition along with other ancillary reliefs as aforementioned.

4. The application has been keenly contested by the decree holder-opposite party by filing his affidavit-in-opposition contending *inter alia*, as follows. **(i)** The order and judgment put into execution has passed the test of the Court of original jurisdiction and the appellate jurisdiction in UAE inasmuch as the order of the Court of original jurisdiction directing for payment of debt was modified in appeal. Since the order and judgment of the Federal Court at Sharjah has crystallized and reached finality, the grounds challenging the order and judgment of the said court is without any merit and is groundless. **(ii)** Numerous attempts were made to serve the summons of the proceedings to the judgment debtors in their given addresses in India and UAE. Adequate service was made to the judgment debtors along with multiple public notifications demanding for appearance of the judgment debtors or their

authorized representatives however the same was never responded to. **(iii)** The moratorium imposed by the Division Bench of National Company Law Tribunal, Kolkata was only applicable to the proceedings that may have arisen or may arise against the judgment debtors in India and have no bearing to the dealings in any foreign country. The jurisdiction of the Hon'ble NCLT is limited to the territory of India and the same cannot be applicable to the proceedings in UAE. Therefore, the contention of the applicant judgment debtors seeking applicability of moratorium on the Federal Court of a different country is absolutely unfounded with no legal merit whatsoever. Further the said moratorium order was revoked by the Hon'ble bench of the NCLT, Kolkata on 26th April, 2022. The order of the appellate court at Sharjah has been passed on 23rd June, 2022 i.e. after lapse of moratorium on 26th April, 2022. Furthermore, the execution proceeding has been initiated after the moratorium has ended. Therefore, the question of applicability of the order of moratorium does not arise at all. **(iv)** The execution petition filed by the decree holder, thus does not deserve either to be stayed or transferred or dismissed and should be continued against the judgment debtors in accordance with law and the application of the judgment debtors is liable to be dismissed.

5. Mr. Krishnaraj Thaker, learned advocate appearing for the applicant-judgment debtor submitted, at the outset, that the decree holder has not furnished any certified copy of the decree passed by the Federal Court at Sharjah and the Appeal Court. The copies of the decree and judgment passed in the proceedings before the Federal Court at Sharjah and Appeal Court filed in the execution proceeding are all translated copies and not certified copies as

required under the law. As per Section 44A of the Civil Procedure Code (*hereinafter referred to as the 'Code'*) the decree of any reciprocating territory may be executed in India if the certified copy of the decree of such Court is filed in the District Court. Since the certified copy of the decree is not filed, the present execution case is liable to be dismissed on such score only.

Further Section 13 of the Code provides six exceptions and circumstances where such foreign judgments are not conclusive and one of the grounds, under clause (d), is where the proceedings in which the judgement was obtained are opposed to natural justice. The material would show that the *ex parte* decree has been passed without affording any opportunity of hearing to the judgment debtors-defendants in view of the fact that no summons/notices were ever served upon the judgment debtors-defendants, which amounts to violation of principles of natural justice and therefore the judgement of the Federal Court and Appellate Court at Sharjah cannot be said to be conclusive.

Moreover, the NCLT, Kolkata holding the judgment debtor no.1 as insolvent, in view of the fact that judgment debtor no.2 has committed default in making payment of the cash credit facility along with interest for which personal guaranty was given by him, passed an order of moratorium on 16th September, 2021 under Section 96 of IBC which provides that any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed and the creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt. On 16th September, 2021 the Hon'ble NCLT, Kolkata Bench passed the order of moratorium and the *ex parte* decree was passed on 28th December, 2021 during the subsistence of the

order of moratorium by which all the legal proceedings in respect of the debt of the personal guarantor was deemed to have been stayed. On such ground, the decree passed by the Federal Court at Sharjah is bad in law and cannot be sustained.

In view of his aforesaid submissions he sought for dismissal of the execution petition.

6. On the contrary, Mr. Harshit Dingra, learned advocate for the decree holder, at the very beginning, relying on decision of this Court passed *Radhamani India Ltd. versus Imperial Garments Ltd. and another*¹ submitted that so far as to the nature and form of the certificate that is required to accompany the certified copy of the decree the statute has not prescribed any form. The purpose of the certificate has been specifically mentioned in Section 44A of the Code and it will be a conclusive proof of the extent of satisfaction or adjustment of the decree. It is therefore clear that the certificate in any form, issued by the Court which passed the decree, will be a certificate for the purpose of Section 44A of the Code. Thus, when the decree-holder obtains a certificate from the Court which passed the decree to show that the decree was not put into execution, there is no reason to say why the same will not be a sufficient certificate for the purpose of Section 44A of the Code.

He further submitted that the judgment of the Federal Court at Sharjah clearly records that the judgment debtors-defendants did not appear in the case in spite of being legally notified to deny correctness of the agreements or dispute

¹ AIR 2005 Cal 47

the relief sought by the plaintiff. Such finding of the Court has not been challenged in appeal. Therefore, the judgment debtors at this stage cannot claim that the summons/notices of the proceedings were not served upon the judgment debtors.

Furthermore, he submitted that the execution petition has been filed after lapse of order of moratorium passed by NCLT, Kolkata and thus the argument advanced on behalf of the judgement debtors that the decree of the Federal Court is hit by the order of moratorium is unacceptable.

In view of the above, he sought for dismissal of the instant application.

7. In reply, Mr. Thaker, learned advocate appearing for the applicant-judgment debtor submitted that the decree holder in his affidavit-in-opposition stated that the notices were served both physically and through email addresses of the judgment debtors and has in support annexed documents marked 'A'. Firstly, the said documents are a translated version of the summons and not the original one and such summons has not been issued to judgment debtor no.1-defendant. Secondly, the paper publication is a draft of the publication and not the paper itself. The publication is presumed to have been made in a daily namely *Gulf Time* which is not in circulation in India or West Bengal and therefore there is no documents of proof of service of summons/notices upon the defendants. Such aspect violates principles of natural justice and thus the judgement and decree of Federal Court, at Sharjah falls within the exception where a foreign judgment is not conclusive provided under clause (d) Section 13 of the Code. Moreover, Section 44A of the Code requires that together with the certified copy of the decree, the decree holder

shall also file a certificate from such foreign Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment. The decision of this Court in *Radhamani India Ltd. (supra)* reiterates the similar proposition of law. In the case at hand there is no compliance of the express provisions of Section 44A of the Code. Hence the execution case is liable to be dismissed.

8. Upon hearing the learned advocates for the respective parties following issues needs to be examined in the present application.

- (i) Whether the decree holder satisfied the requirement under section 44A of the Code providing for execution of decrees passed by Courts in reciprocating territory?
- (ii) Whether the judgment debtors were duly served with the summons/notices of the proceedings before the Court at Sharjah, UAE?
- (iii) Whether the decree passed by the Court at Sharjah, UAE is opposed to principles of natural justice affecting its conclusiveness in view of the exception under clause (d) of Section 13 of the Code?
- (iv) Whether the order of moratorium of NCLT, Kolkata under IBC extends to foreign jurisdiction in Court at Sharjah, UAE?

Issue No.1: Whether the decree holder satisfied the requirement under section 44A of the Code providing for execution of decrees passed by Courts in reciprocating territory?

9. In order to deal with the aforesaid issue, it would be profitable to reproduce the provisions of Section 44A of the Code as hereunder:

“44-A. Execution of decrees passed by Courts in reciprocating territory.”-(1) *Where a certified copy of a decree of any of the superior courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.*

(2) Together with the certified copy of the decree shall be filed a certificate from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of Section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the court that the decree falls within any of the exceptions specified in clauses (a) to (f) of Section 13.

Explanation 1.—*“Reciprocating territory” means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and “superior courts”, with reference to any such territory, means such Courts as may be specified in the said notification.*

Explanation 2.—*“Decree” with reference to a superior court means any decree or Judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or Judgment.”*

Upon cursory reading of the aforesaid provisions, it manifests that for execution of decrees passed by Courts in reciprocating territory, together with the certified copy of the decree a certificate from such Court in reciprocating territory stating the extent, if any, to which the decree has been satisfied or adjusted has to be filed and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment. Thus for execution of decrees passed by Court in reciprocating territory under Section 44A of the Code, twin compliances should necessarily be made by the decree holder, *firstly*, the decree holder should furnish certified copy of the decree passed by the said Court in reciprocating territory

and *secondly*, the decree holder should furnish a certificate from such Court in reciprocating territory stating the extent, if any, to which the decree has been satisfied or adjusted. Bearing in mind the aforesaid statutory requirement, let me to revert to the materials on record to find out whether the same has been satisfied or not. It is found that the judgment of the originating Court and the appellate Court filed with the execution petition are translated version of the original one and not the certified copy of the decree and judgment of such Court of reciprocating territory. It is also not urged on behalf of the decree holder that the translated version of the judgment of the Court of reciprocating territory are the certified copy of the decree and judgment. Therefore, it is palpable from the records that the execution petition filed by the decree holder is not accompanied by a certified copy of the decree of the Court of reciprocating territory. During the course of hearing Mr. Dingra, learned advocate for the decree holder relying on *Radhamani India Ltd. (supra)* tried to impress upon the Court that document of any nature and form may be considered as a certificate as required under the provisions of Section 44A of the Code. In *Radhamani India Ltd. (supra)* an information slip filed in the execution proceedings was considered to be a certificate as required under Section 44A of the Code. It is pertinent to note that in the present case at hand the decree holder has not filed any certificate of any nature or form from such Court in reciprocating territory stating the extent, if any, to which the decree has been satisfied or adjusted or the decree has not been satisfied at all. In the absence of satisfaction of the statutory requirement by the decree holder namely furnishing certified copy of the decree along with copy of the certificate showing

satisfaction or adjustment of the decree or the decree being not satisfied at all, the execution case cannot be proceeded with as has been rightly argued by Mr. Thaker, learned advocate appearing on behalf of the applicant-judgment debtor.

Issue No.2: Whether the judgment debtors were duly served with the summons/notices of the proceedings before the Court at Sharjah, UAE?

10. The applicant-judgment debtors have categorically contended that the summons/notices of the proceedings before the Court at Sharjah, UAE was never been served upon the judgment debtors. *Per contra*, the decree holder has asserted in his affidavit-in-opposition that the judgment debtors were duly notified of such proceedings and in support he has annexed documents. At the outset, upon going through the translated version of the judgment of the Court at Sharjah, UAE (Annexure 'A' to the Execution petition) it is found that the said Court has recorded that the judgment debtor-defendant did not appear in the case in spite of being legally notified to deny correctness of the agreements or dispute the relief sought by the plaintiff. Be that as it be, upon perusal of Annexure 'A' of the affidavit-in-opposition it is found that the summons/notices annexed thereto is a translated version of the original summons/notices and not the certified copy of the original summons/notices showing proof of service of such summons/notices upon the defendants. Further the translated version of the original summons shows that such summons has been issued only to the judgment debtor no.2/defendant. There is no document produced to show that the summons/notices of the proceedings were also issued to judgment debtor no.1/defendant. Thus there is nothing to suggest that the summons/notices were duly served upon the defendants. Moreover, the copy of the paper

publication is also not the newspaper in which the publication was made. The materials produced by the decree holder if presumed to be true and correct would show that the paper publication was made in the daily namely *Gulf Time* which is in circulation at Sharjah, UAE. The publication was never made in any of the newspapers in circulation in Kolkata, West Bengal. In view of the above, it is seen that the decree holder has failed to produce relevant documents showing of service of summons/notices upon all the judgment debtors/defendants.

Issue No.3: Whether the decree passed by the Court at Sharjah, UAE is opposed to principles of natural justice affecting its conclusiveness in view of the exception under Clause (d) of Section 13 of the Code?

11. It has been strenuously argued on behalf of the judgment debtors that since the service of summons/notices of the proceedings were not made upon the defendants thereby the defendants were not afforded opportunity of hearing, it resulted in violation of principles of natural justice and therefore the judgment passed by the Court at Sharjah, UAE is not conclusive being hit by the exception under clause (d) of Section 13 of the Code.

11.1. In order to appreciate the aforesaid issue, it would be profitable to reproduce the relevant provisions of Section 13 of the Code as hereunder:

“13. When foreign judgment not conclusive.-A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except-

- (a) where it has not been pronounced by a Court of competent jurisdiction;*
- (b) where it has not been given on the merits of the case;*
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;*
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;*

- (e) *where it has been obtained by fraud;*
- (f) *where it sustains a claim founded on a breach of any law in force in India.”*

It is settled that the judgment of a Court must observe the minimum requirements of natural justice, that is it must give reasonable notice to the parties to the dispute and afford each party adequate opportunity of presenting his case. The wholesome maxim *audi alteram partem* is deemed to be universal, not merely of domestic application, and therefore, the only question is whether the defendants had an opportunity of contesting the proceeding in the reciprocating court. In the foregoing paragraph it is found that the decree holder could not produce any proof of service of summons/notices upon the defendants. In the case of ***Sankaran Govindan versus Lakshmi Bharathi and Others***², the Hon’ble Supreme Court held that the expression natural justice relates to the irregularities in procedure rather than to the merits of the case and observed as follows:

*“40. We do not think that there is any substance in this contention. It is extremely difficult to fix with precision the exact cases in which the contravention of any rule of procedure is sufficiently serious to justify a refusal of recognition or enforcement of a foreign judgment. It is difficult to trace the delicate gradations of injustice so as to reach a definite point at which it deserves to be called the negation of natural justice. The expression “contrary to natural justice” has figured so prominently in judicial statements that it is essential to fix its exact scope and meaning. When applied to foreign judgments, it merely relates to the alleged irregularities in procedure adopted by the adjudicating court and has nothing to do with the merits of the case. If the proceedings be in accordance with the practice of the foreign court but that practice is not in accordance with natural justice, this Court will not allow it to be concluded by them. In other words, the courts are vigilant to see that the defendant had not been deprived of an opportunity to present his side of the case. The wholesome maxim *audi alteram partem* is deemed to be universal, not merely of domestic application, and therefore, the only question is, whether the minors had an opportunity of contesting the proceedings in the English Court. If notices of the proceedings were served on their natural guardians, but they did not appear on behalf of the minors although they put*

² (1975) 3 SCC 351

in appearance in the proceedings in their personal capacity, what could the foreign Court do except to appoint a court guardian for the minors? Under Order 32 of the Civil Procedure Code, if the natural guardian is unwilling to act as guardian for a minor in a suit, the court can appoint an officer of the court to be such guardian. In effect, when the natural guardians were given notice of the proceedings on behalf of the minors, an opportunity was given to the minors through those guardians to contest the proceedings. All that is required by rules of natural justice is that minors should be given an opportunity to contest through their natural guardians. Even if there was any breach of the rule of procedure prevailing in the forum where the proceedings were conducted, that would not be material, as what we have to see is whether the proceedings have been conducted in substantial compliance with the prevailing notion of fairplay. And, when the natural guardians evinced their intention not to contest the proceedings by not putting any appearance on behalf of the minors, we think the requirement of natural justice was satisfied when the Court appointed an officer of the Court to be guardian ad litem of the minors in the proceedings.”

Bearing in mind aforesaid proposition, since summons/notices was not duly served upon the judgment-debtors/defendants and they have been deprived of an opportunity to present their side of the case, it is contrary to natural justice and squarely falls within exception under clause (d) of Section 13 of the Code. All that is required by rules of natural justice is that in a proceeding the defendants should be given an opportunity to contest and place their case. If the proceedings before the foreign court is not in accordance with natural justice, this Court will not allow it to be concluded by them.

Issue No.4: Whether the order of moratorium of NCLT, Kolkata under IBC extends to foreign jurisdiction in Court at Sharjah, UAE?

12. It has been urged on behalf of the applicant-judgment debtor that the judgment and decree of the Federal Court at Sharjah, UAE is bad in law since the same has been passed during subsistence of the order of moratorium passed by the NCLT, Kolkata Bench. It is found from Annexure-B at page 30 of the application that on 16th September, 2021 in an application under Section 95(1) of the IBC, an order of interim moratorium was passed under Section

96(1)(a) of the IBC. Further at page 35 of the application, it is found that such interim moratorium under Section 96 was revoked on 26th April, 2022 and moratorium under Section 101 of the IBC was made effective till the end of 180 days or until an adjudicating authority approves the repayment plan, whichever is earlier. Admittedly, the Court at Sharjah passed *ex parte* order on 28th December, 2021 during the subsistence of the interim moratorium under Section 96 of the IBC and the said order was amended on 23rd June, 2022 during which period the moratorium under Section 101 was subsisting. Now it is to be examined what would be the implication of such order of moratorium upon the proceeding before a Foreign Court. As per Section 1 of the IBC, it extends to the whole of India. The moratorium under Section 96 is designed to protect the debtor from further legal proceedings concerning the debt. However, it primarily applies to action initiated against the debtor within the jurisdiction of Indian Courts. The IBC does not explicitly extend its moratorium provision to foreign jurisdiction. The legal framework governing insolvency in India does not provide for the enforcement of Indian moratorium in Foreign Courts. Therefore, proceedings initiated in a Foreign Court may not be stayed by the moratorium under Section 96 of IBC or Section 101 of IBC. In view of above, the argument advanced on behalf of the applicant-judgment debtors in this regard falls short of merit.

13. In light of the aforesaid discussion, the application being GA 1 of 2023 is allowed. Let there be an order in terms of prayer (a) of the Master's Summons.

14. Accordingly, the execution case being EC 180 of 2023 is dismissed.

15. Urgent photostat certified copy of the order, if applied for, be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)