

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1494 OF 2024

Ambit Finvest Private Ltd. Petitioner

Versus

DEBT Recovery Tribunal-1 & Ors. Respondents

Mr. Mahesh Deshmukh a/w. *Ms. Bijal K. Gogri & Mr. Rahul Sundaram i/b. GNP Legal, Advocates for Petitioner.*

**CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : FEBRUARY 06, 2024

P. C.

1. The above Writ Petition is filed challenging the Order dated 2nd May, 2022 passed by the DRT-1, Mumbai. For the sake of convenience, the impugned order is reproduced hereunder:-

1. Issue Notice to the respondent, meanwhile in terms of Section 96(1)(a) of the IBC the interim-moratorium has commenced on the date of filing of the application.

2. List this matter on 14/06/2022.

2. It is the case of the Petitioner that the DRT-1, Mumbai inherently lacked jurisdiction to entertain any application seeking to adjudge Respondent No.4 (Pravin Jaswant Rai Jain) as an Insolvent under the provisions of the Insolvency and Bankruptcy Code, 2016 [*"IBC 2016"*], because Pravin Jaswant Rai Jain is a guarantor of a corporate debtor and in such situation, the proceedings would have to be filed before the adjudicating authority, which is the NCLT. The Learned Counsel appearing on behalf of the Petitioner, in support of this argument, relied upon Section 60 of the IBC 2016.

3. We have heard the Learned Counsel appearing on behalf of the Petitioner. Though Respondent No.2 [the party who has filed the petition under Section 95 of the IBC 2016 before the DRT-1, Mumbai], is served by private notice, it has not appeared before the Court today. Even the other respondents have been served by private notice and none have appeared on their behalf.

4. *Prima facie* we are of the view that where resolution of an individual who is a personal guarantor for a corporate debtor is sought, the jurisdiction of National Company Law Tribunal (*"NCLT"*) as stipulated under Section 95 read with Section 60 of the IBC 2016 would need to be invoked. *Prima facie*, therefore, we are of the view that the DRT-1, Mumbai inherently lacks jurisdiction to entertain

any petition filed under the IBC 2016 against the guarantor, namely, Pravin Jaswant Rai Jain.

5. In these circumstances, as and by way of an ad-interim relief, there will be ad-interim relief in terms of prayer clause (d), which reads thus :-

“That pending the final hearing and final disposal of this Writ the Impugned Order dated 02.05.2022 and also the Insolvency Petition No.02/2022 be stayed.”

6. The Registry is directed to issue notice to all the Respondents, returnable on 12th March, 2024.

7. The parties are also put to notice that we may dispose of the above Writ Petition at the admission stage itself.

8. Stand over to 12th March, 2024.

9. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B.P. COLABAWALLA, J.]