

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

WRIT PETITION NO.7477 OF 2024

Tata Capital Limited
A Company incorporated under
the Companies Act, 1956, having its
Registered office at Peninsula Business Park,
11th Floor Tower A,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai 400 013.

...Petitioner

Versus

1. Geeta Passi
Having address at 1/23-B, Asaf Ali
Road, New Delhi 110002

2. Sanjay Passi
Having address at Pasco House, 6
Industrial Estate, Palam Gurgaon Road,
Gurugram, 122015, Haryana

3. Sharuk Passi
Having address at 1/23-B Asaf Ali Road
New Delhi 110002

...Respondents

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**SAJAKALI
LIYAKAT
JAMADAR**

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SAJAKALI LIYAKAT
JAMADAR
Date: 2024.06.20
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Dr. Birendra Saraf a/w Mr. Jehaan Mehta, Ms. Sanaya Dadachanji,
Ms. Maithili Prabhu i/by Manilal Kher Ambalal & Co., for the
Petitioner.

Mr. Rajeev Kumar Pandey i/by PRS Legal for Respondent No.1

Ms. Ruchi Magoo a/w Mr.Dhiren Durante and Mr.Sagar Pillai i/by
Lexicon Law Partners, for Respondent No.3.

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CORAM : AVINASH G. GHAROTE, J.
DATE : 20th JUNE 2024

JUDGMENT :

1. The petition questions the order dated 07.10.2022 (page-48) by which the learned arbitrator has kept the proceedings before him in abeyance as long as the moratorium under Section 95 of the IB Code 2016 operates in respect of the debts owed by the respondent No.2/Tarun Kapoor were concerned and the subsequent order dated 20.03.2023 refusing to vacate the aforesaid order (page -51).

2. The facts leading to the present petition in brief are as under:

i) The present petitioner which is a finance company had granted channel finance facility to Sterling Motor Company of Noida, Uttar Pradesh under various documents. One Mr. Tarun Kapoor is the Proprietor of Sterling Motor Company (SMC for short hereinafter), who had executed the aforesaid documents as a Proprietor and had also stood as guarantor for repayment of the finance. Mrs. Pavan Kapoor, Mr. B.L. Passi and Rameshwar Sweets and Namkeens Pvt. Ltd. stood as

guarantors. As there was default on part of SMC its account was categorized as NPA on 04.09.2019 and by a notice dated 15.10.2019 the loan was recalled by the petitioner.

ii) The Petitioner thereafter initiated arbitration proceedings before Gulnar A. Mistry, Advocate who was appointed as Arbitrator.

iii) During the pendency of the arbitration proceedings an application namely C.P (IB) – 1097(ND)/2020 came to be filed by Volkswagen Finance Pvt. Ltd against SMC Mr. Tarun Kapoor, as a result of which an application came to be filed by Mr. Tarun Kapoor and Mrs.Pavan Kapoor before the Arbitral Tribunal, contending that in view of Sec.96 of the IB Code, a moratorium had come into effect due to the above proceedings on account of which the Arbitral proceedings were required to be kept in abeyance. The learned Arbitrator by the order dated 11/1/2021 (pg.64) accorded the benefit of the moratorium to Mr. Tarun Kapoor, the proprietor of SMC and one of the guarantors Smt. Pavan Kapoor and proceedings against them were directed to remain in abeyance, but the arbitration

proceedings against the respondents 4 & 5 were directed to continue.

iv) The NCLT proceedings continued and the Member Judicial (NCLT) New Delhi, Court – III, by the order dated 04.01.2021 (Page-52) appointed Mr. Kamal Agarwal as the Resolution Professional (RP) and also passed an interim moratorium order in the following terms:

“10. It is made known to everyone that one filing this application by the Applicant/Creditor the interim-moratorium commences as is stipulated under Section 96 (1)(a) in relation to all the debts of the personal guarantor and shall cease to have effect on the date of admission of this Application and during the interim moratorium period the following is prohibited:

- a. Any pending legal action or proceedings in respect of any debt of the personal guarantor shall be deemed to have been stayed; and
- b. The creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.
- c. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

v) By an order dated 11.01.2021 (Page 57) the earlier order dated 04.01.2021 was rectified by changing of name as Mr.Tarun Kapoor, instead of Mrs. Pavan Kapoor and so also the dates as indicated therein.

vi) In the application filed by Volkswagen Finance Pvt. Ltd. being C.P. (IB)-25 (ND)/2021 under Section 95(1) of the Insolvency and Bankruptcy Code 2016 (IB Code) r/w Rule 7(2) of the IB Code (Application to Adjudicating Authority for IRP for personal guarantors to (C.D.) Rules 2019 against Smt. Pavan Kapoor, by an order dated 03.02.2021 (Page 59) the Member Judicial (NCLT) New Delhi, Court – III appointed one Kamal Agarwal as Resolution Professional and also granted a moratorium in the following terms: (**Page -61**)

“10. It is made known to everyone that on filing this Application by the Applicant/Creditor the interim moratorium commences as is stipulated under Section 96(1)(a) in relation to all the debts of the persona guarantor and shall cease to have effect on the date of admission of this Application and during the interim moratorium period the following is prohibited.

- a. Any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed; and
- b. The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.
- c. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with financial sector regulator.”

vii) The original respondent No.4 Shri. B.L. Passi passed away on 12.05.2021 and his legal heirs the present respondents were impleaded in his place as respondents 4A to

4B in pursuance to the order dated 19.07.2021 passed by the arbitrator.

viii) Mr. Tarun Kapoor, the original respondent No.2 filed an application in arbitration proceedings seeking adjournment of the arbitration proceedings, sine die on account of the proceedings against S MC being kept in abeyance by the order dated 11.01.2021, which came to be dismissed by the order dated 16.12.2021 (pg.69) as a result of which the proceedings continued.

ix) On 06.05.2022 the arbitrator passed an order and disposed of the present petitioners application under Section 17 of the ANC Act by restraining the respondents 1 to 3 in the arbitral proceedings from disposing of certain assets.

x) On 19.09.2022 present respondent no.1 (respondent no.4-A in arbitration proceedings/one of the legal heirs of late Shri B.L. Passi) filed application before the learned sole arbitrator seeking an indefinite stay on the arbitration proceedings in view of the mandate of Section 96(1) (b)(i) of the Insolvency Code.

xi) By an order dated 07.10.2022 (pg.43) which is impugned herein, the learned Sole Arbitrator directed the arbitration proceedings to remain in abeyance as long as the moratorium under Section 95 of the Insolvency Code operated.

xii) An application filed by the present petitioner to vacate the order dated 17.10.2022 came to be rejected by the order dated 20.03.2023, (pg.49) which is also impugned.

xiii) It is stated at the bar that a settlement agreement came to be executed between the petitioner and Rameshwar Sweets and Namkeens Pvt. Ltd./Original respondent No.5 in the arbitration proceedings on 03.10.2023 as a result of which it stood deleted from array of respondents before the arbitrator.

3. Dr. Birendra Saraf, the learned Senior Counsel for the petitioner, contends as under :

3.1. That since the moratorium which was granted by the NCLT by the orders dated 04.01.2021 and 03.02.2021 was only favouring Mr.Tarun Kapoor and Smt.Pavan Kapoor (respondents No.2 & 3 before the arbitrator) the arbitration

proceedings, could not have been kept in abeyance by the learned arbitrator, but ought to have been continued against the present respondents who were the legal heirs of the original respondent No.4 Shri.B.L.Passi.

3.2. By inviting my attention to the meaning of 'debt' as defined in Section 3(11) of the IB Code, he contends, that it is inclusive in nature. Section 14 of the IB Code is applicable only to the 'corporate debtor' and not to a surety in a contract of guarantee to a corporate debtor. In contradistinction, to which the interim moratorium, as provided in Section 96 of the IB Code inasmuch as, it uses the expression "all the debts, or "any debt" would mean the 'debt' of the person in whose favour the moratorium has been granted and would not be capable of being extended to any other parties, or guarantors of such 'debt' and the arbitral proceedings therefore would be liable to be continued against the guarantors in whose favour there is no moratorium, on account of which the impugned orders passed by the learned Arbitrator cannot be sustained and are liable to be quashed and set aside.

3.3. It is only on a discharge order being passed under

Section 138 of IB Code by virtue of the provisions of Section 139 of the same, there is a discharge and not otherwise on account of which the arbitration proceedings are liable to be continued against the present respondents who are the legal heirs of the original respondent No.4 Shri. B. L. Passi in the arbitration proceedings.

3.4. By relying upon **Jagannath Ganeshram Agarwale Vs. Shivnarayan Bhagirath 1940 ILR 387** it is contended that the liability of the surety is co-extensive and not in alternative with the principal debtor.

3.5. Relying upon **Mukesh Gupta Vs. SICOM Ltd. 2004 (1) MhL.J. 159** it is also contended that the proceedings can also be instituted against the guarantor treating him as a principal debtor and it is not necessary to sue the principal debtor as the liability of the principal debtor and that of the guarantor is co-extensive.

3.6. Reliance is also placed upon him on **State Bank of India Vs. V. Ramkrishnan and Anr. (2018) 17 SCC 394**, to contend that the object of the moratorium is not to enable the guarantor to escape from the liability.

3.7. Reliance is also placed upon **Axis Trustee Services Limited Vs. Brij Bhushan Singal and Anr. 2022 SCC Online Del 3634** to contend that the language of Section 96(1) of the IB Code cannot be stretched so as to include all co-guarantors within the ambit of the interim moratorium and the expression “all the debts” in Section 36(1)(a) has to be in respect of all debts of a particular debtor and would not include guarantors.

3.8. By relying upon **Dilip B. Jiwrajka Vs. Union of India 2023 SCC OnLine SC 1530** he contends that the expression debt as used in Section 96 would indicate that it is debt centric, as against which the ‘debt’ in so far as Section 14 is concerned is creditor centric.

3.9. He therefore submits that impugned order passed by the learned arbitrator cannot be sustained and are liable to be quashed and set aside.

4. learned counsel for the respondent No.1 raises a preliminary objection that the petition is not maintainable, as any such order would need to be challenged by the petitioner only in proceedings under Section 34 or 37 of the Arbitration

& Conciliation Act, 1996 (A & C Act, for short hereinafter), for which he places reliance upon : **SBP & Co. Vs. Patel Engineer Ltd and Anr. 2005 8 SCC 618 ; Deep Industries Ltd Vs. ONGC (2020) 15 SCC 706; Bhaven Construction Vs. Sardar Sarovar Narmada Nigam Ltd. (2022) 1 SCC 75; India Glycols Ltd. Vs. Micro & Small Enterprises Facilitation Council (2023) SCC OnLine SC 1852; State Trading Corporation of India Ltd Vs. Micro & Small Enterprises Facilitation Council (2024) SCC OnLine Del 979; Suncity Dhoot Colonizers Pvt Ltd Vs. Ram Chandra Patidar (2024) SCC OnLine MP 1203; Master Pint Through Partner Jagdish Chouhan and Anr. Vs. Sandhya Chouhan (2024) SCC OnLine MP 1678; Conart Engineers Limited Vs. The Arbitrator, GCCI, Shri. Ambica Mills R/Special Civil Application No.9924 of 2023.**

4.1 Without prejudice to the above, he further submits that the moratorium under Section 96, of the IB Code being debt centric, would cover the entire debt and it would be immaterial, whether the liability of one of the parties to the arbitration proceedings is in the capacity of a guarantor or otherwise, in view of which the entire proceedings have rightly

been kept in abeyance by the learned Arbitrator.

5. Dr. Saraf, learned Senior Counsel for the petitioner, in rebuttal, by relying upon *Deep Industries Ltd./ ONGC* (supra) and *Bhaven Construction / Sardar Sarovar Narmada Nigam Ltd.* (supra), contend that the jurisdiction of this Court to interfere in orders of the Arbitrator, in exercise of its writ jurisdiction is not fully ousted and interference is permissible when the orders in arbitration proceedings indicate that the orders patently lack jurisdiction and considering that the impugned orders stall the arbitral proceedings, which go against the settled position that this should not be so done, a writ would certainly be maintainable.

6. *S B P & Co. / Patel Engineering* (supra), was a case under Sec.11(6) of the A & C Act, in which the hon'ble Apex Court by a majority had held as under :

45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral

Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.

46. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.

6.1. In *Alchemist Asset Reconstruction Co. / M/s Hotel Gaudavan Pvt. Ltd.* Civil Appeal No.16929/2017, decided on 23/10/2017, the hon'ble Apex Court has in relation to a moratorium under sec.14 of the IB Code, held that an arbitration proceeding cannot be initiated and continued.

6.2. In *Deep Industries ltd / ONGC* (supra), the hon'ble Apex had held as under :

17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing

first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.

22. -----. Even otherwise, entering into the general thicket of disputes between the parties does not behave a court exercising jurisdiction under Article 227, where only jurisdictional errors can be corrected.-----.

Bhaven Construction / Sardar Sarovar (supra); ***Suncity Dhoot Colonizers Pvt. Ltd. / Ram Chandra Patidar*** (supra) and all the other judgments cited by the learned Counsel for the respondents, all reiterate the same principles, that the writ jurisdiction of this Court can only be invoked when there is perversity or patent illegality, which is apparent on the face of it. The hon'ble Apex Court in ***State Power Corpn. Ltd. v. Emta Coal Ltd., (2020) 17 SCC 93*** (supra) itself has clarified what the patent illegality in ***Deep Industries Ltd./ ONGC*** means in the following words :

3. According to Shri Viswanathan, one look at the joint venture agreement and the arbitration clause therein would make it clear that the third party in this case had not been referred to at all, as a result of which there is a patent lack of inherent jurisdiction within the meaning of para 17 of *Deep Industries Ltd.* [*Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706*]

4. We are of the view that a foray to the writ court from a Section 16 application being dismissed by the arbitrator can only be if the order passed is so perverse that the only possible conclusion is that there is a patent lack in inherent jurisdiction. A patent lack of inherent jurisdiction requires no argument whatsoever — it must be the perversity of the order that must stare one in the face.

6.3. The position has been further clarified in ***India Glycols Limited and Another / Micro and Small Enterprises Facilitation***

Council, Medchal, (supra) in the following words :

14. Mr. Parag P Tripathi, senior counsel appearing on behalf of the appellant sought to urge that the view of the Facilitation Council to the effect that the provisions of the Limitation Act, 1963 have no application, which has been affirmed by the Division Bench in the impugned judgment, suffers from a perversity, and hence a petition under Article 226 of the Constitution ought to have been entertained. We cannot accept this submission for the simple reason that Section 18 of the MSMED Act, 2006 provides for recourse to a statutory remedy for challenging an award under the Act of 1996. However, recourse to the remedy is subject to the discipline of complying with the provisions of Section 19. The entertaining of a petition under Articles 226/227 of the Constitution, in order to obviate compliance with the requirement of pre-deposit under Section 19, would defeat the object and purpose of the special enactment which has been legislated upon by Parliament.

6.4. The legal position is therefore well settled that the jurisdiction of this Court under Article 226 of the Constitution, in respect of orders passed in arbitral proceedings, can only be invoked, where the Arbitral Tribunal, has acted perversely or had committed a patent illegality, which is apparent on the face of record and not otherwise, the settled norm being that orders passed therein can be made the subject matter of an application under sec.34 or an appeal under sec.37 of the A & C Act, 1996, the intention being to get the arbitration proceedings decided as expeditiously as possible with minimum judicial intervention.

7. The basic issue which requires to be considered is whether the impugned orders could be categorised as one, which are so perverse that the only possible conclusion would be that there is patent lack of inherent jurisdiction, in the Arbitrator in passing them, on the face of it, so that the writ jurisdiction of this Court can be invoked.

8. Dr. Saraf learned Senior Counsel for the petitioner is correct in the proposition, that considering a debt, which is unpaid, the creditor, could move the Court, against the principal borrower and the surety/guarantor for recovery of the debt, as the liability of a surety/guarantor, is co-extensive with that of the principal borrower. It is equally a settled position of law, that a creditor could also choose to proceed against the surety/guarantor, alone for recovery of the debt, without suing the principal borrower and in such a case, if a decree/award is passed against the surety/guarantor, then such surety/guarantor, could in turn sue the principal borrower for the recovery of such debt, [see **Jagannath Ganeshram Agarwale Vs. Shivnarayan Bhagirath** (supra) and **Mukesh Gupta Vs. SICOM Ltd.** (supra)].

9. A 'debt', is defined in sec.3(11) of the I B Code to mean a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. It is material to note that sec.3(11) of the IB Code when it defines 'debt', states it to be a liability or obligation in respect of a claim which is due from '**any person**'. The very use of the expression 'any person', would mean that no distinction can be drawn on the basis of, from whom the debt is due, a principal borrower or a guarantor. Sec. 96 of the IB Code, also uses the expression 'all the debts', in clause (a) of subsection (1) and 'any debt', in sub-clauses (i) & (ii) of clause (b) of sub-section (1). When Sec.96 of the IB Code, speaks of a moratorium in respect of 'any debt', the same would mean the entire debt, irrespective from whom it is due.

9.1. It would be equally trite to say that Sec.14 of the IB Code would have no applicability in the instant matter. The hon'ble Apex Court in *SBI / V. Ramakrishnan & anr* (supra) in respect of the difference of moratorium as to what is contemplated by sec.14 and 96 of the IB Code, above has stated as under :

26. We are also of the opinion that Sections 96 and 101, when contrasted with Section 14, would show that Section 14 cannot possibly apply to a personal guarantor. When an application is filed under Part III, an interim-moratorium or a moratorium is applicable in respect of any debt due. First and foremost, this is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution processes may be initiated under Part III. Secondly, the protection of the moratorium under these sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed. The difference in language between Sections 14 and 101 is for a reason.

26.1. Section 14 refers only to debts due by corporate debtors, who are limited liability companies, and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and co-extensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor — often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor.

SBI / V. Ramakrishnan (supra), thus categorically distinguished between the moratorium under Sec.14 vis-a-vis Sec.96 of the IB Code to hold that the protection of the moratorium under sec. 96 is far greater than that of Section 14, in that pending legal proceedings in respect of the ‘debt’ and not the debtor are stayed, as such moratorium is in relation to the debt and not the debtor.

9.2. In ***Dilip B. Jiwrajka v. Union of India, 2023 SCC OnLine SC 1530***, while considering the impact of a moratorium under

Sec.14 of Part II vis-a-vis interim moratorium under sec.96 of

Chapter III of Part II, this is what the hon'ble Apex Court said :

57. Section 96, as its marginal note indicates, deals with an “interim-moratorium”. In terms of section 96, the interim moratorium takes effect on the date of the application. In other words, the very submission of an application under section 94 or section 95 triggers the interim moratorium which then ceases to have effect on the date of the admission of the application (under section 100). The consequences which flow from an interim moratorium are specified in clause (b) of sub-section (1) of section 96. The impact of the interim-moratorium under section 96 is that a legal action or proceeding pending in respect of any debt is deemed to have been stayed and the creditors or the debtors shall not initiate any legal action or proceedings in respect of any debt. The crucial words which are used both in clause (b)(i) and clause (b)(ii) of sub-section (1) of section 96 are “in respect of any debt”. These words indicate that the interim-moratorium which is intended to operate by the Legislature is primarily in respect of a debt as opposed to a debtor. Clause (b) of sub-section (1) indicates that the purpose of the interim-moratorium is to restrain the initiation or the continuation of legal action or proceedings against the debt.

58. This must be contra-distinguished from the provisions for moratorium which are contained in section 14 in relation to the corporate insolvency resolution process under Part II. Section 14(1)(a) provides that on the insolvency commencement date, the institution of suits or continuation of pending suits or proceedings against the corporate debtor, including proceedings in execution shall stand prohibited by an order of the Adjudicating Authority. Clause (b) of sub-section (1) of section 14 empowers the Adjudicating Authority to declare a moratorium restraining the transfer, encumbrance, alienation or disposal by the corporate debtor of any of its assets or any legal right or beneficial interest therein. Significantly, the moratorium under section 14 operates on the order passed by an Adjudicating Authority. The purpose of the moratorium under section 96 is protective. The object of the moratorium is to insulate the corporate debtor from the institution of legal actions or the continuation of legal actions or proceedings in respect of the debt.

9.3. The protection mandate of Sec.96 of the IB Code, is therefore in respect of the ‘debt’, and not the debtor. ***Axis Trustee Services Ltd. / Brij Bhushan Singhal*** (supra), will

therefore have to be read in the context of what has been said about sec.96 of the IB Code in *Dilip B. Jiwrajka v. UOI* (supra).

10. Once this is so, then when the NCLT granted a moratorium under sec.96 of the IB Code in favour of Mr. Tarun Kapoor who was the principal borrower being the proprietor of SMC and Mrs. Pavan Kapoor, being the guarantor, the same will have to be construed as a moratorium in respect of the entire 'debt'. It is the 'debt', and its entitlement which has been claimed to be put before the learned Arbitrator, for decision, in the arbitration proceedings. The Claim does not make any distinction between a 'debt', vis-a-vis Mr. Tarun Kapoor as a principal debtor, or the other parties thereto as the guarantors or even considering their co-extensive liability. The 'debt', is the debt of SMC/ Tarun Kapoor as principal borrowers as well as of the guarantors. The 'debt', for the purpose of the moratorium, cannot be severed into the 'debt' of the principal borrower or for that matter of one of the guarantors on the one hand, and the debt of the other guarantors, in this case

the legal heirs of the original respondent no.4, Mr. B. L. Passi. Though it can be said that the liability of the original respondent no.4, late Mr. B.L. Passi, was co-terminus with the principal borrower and the other guarantors, the liability of the present respondents, would be restricted to the assets of late Shri B.L. Passi, to the extent to which they would inherit the same. Be that as may, a distinction cannot be carved out, in respect of the 'debt', award in respect of which is claimed in the arbitration proceedings, for the purpose of continuation of the arbitral proceedings, between the liability of the principal borrower/ guarantor who have been granted a moratorium and the others who have not approached the NCLT, as the word 'debt', as used in Sec.96 of the IB Code, has to be held to be the 'debt', in its entirety and not otherwise.

11. Sec. 138 of the I B Code and its effect as enumerated in Sec.139, have no bearing upon the matter which is being considered in the present petition.

12. It is also necessary to note that there is no provision in the A & C Act, 1996 for splitting up of arbitration proceedings,

by conceiving of a situation of the arbitration proceedings being stayed against some of the parties and going ahead against some. The arbitration proceedings will have to be decided in their entirety against all the parties and the entitlement of the claimant and the liabilities of the respective respondents, will be determined on the basis of evidence which may be led therein, which cannot be on a piecemeal basis.

13. The Arbitral Tribunal, in staying the arbitral proceedings for the duration of the moratorium as granted by the NCLP under sec.96 of the IB Code, in my considered opinion, has not done anything which can be termed as perverse, or would fall within the expression 'patent illegality', so that the jurisdiction of this Court under Article 226 of the Constitution can be invoked.

14. The petition is therefore not maintainable and is dismissed. In the circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE, J.)