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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 13th August, 2024**

+ **W.P.(C) 11196/2024 & CM APPL. 46304/2024**

SEETA SHAH

.....Petitioner

Through: **Mr.Arjun Kaushal, Advocate.**

versus

RESERVE BANK OF INDIA & ANR.

.....Respondents

Through: **Mr.Rachit Bigghe, Advocate**
for R-2/ICICI Bank.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 46303/2024 – EXMP

1. Allowed, subject to all just exceptions.
2. The application shall stand disposed of.

W.P.(C) 11196/2024

3. The petitioner is invoking the writ jurisdiction of this Court and seeks initiation of an appropriate writ against the respondents, whilst seeking the following relief:-

“(i) Grant an appropriate writ, order or direction, directing the Respondent No. 1, Reserve Bank of India, to appropriately include guidelines and instructions for enforcement of Corporate and Personal Guarantees in the Circular bearing No. RBI/2024-25/03, DOR. STR.REC.2/13.07.010/2024-25 titled as Master Circular on Guarantees & Co-acceptances dated 01.04.2024 in exercise of its powers under the Banking Regulation Act, 1949;
(ii) Grant an appropriate writ, order or direction, directing the Reserve Bank of India to issue appropriate directions to conduct an enquiry into the affairs of the Respondent No. 2 Bank in relation to



the facts of the instant case and to take appropriate penal and remedial actions against Respondent No. 2, in exercise of its powers under Section 35A of the Banking Regulation Act, 1949;
(iii) Grant an appropriate writ, order or direction, directing the Respondent No. 2, to revise its demands and disclosures qua its claims under Corporate Guarantee dated 10.08.2016, including demand in CP/119/IB/2021, to be in strict conformity with the terms of the Corporate Guarantee, particularly Clause 33 thereof;
(iv) Pass such other or further order/s which this Hon'ble Court may deem fit and proper in the interest of justice."

4. Learned counsel for respondent No. 2 is present in the Court on serving of the advance notice.
5. Having heard the learned counsels for the parties and on perusal of the record, it appears that the petitioner stood as a guarantor, being the Director of Ushdev Engitech Ltd. (CD)¹, in respect of the loan taken by the CD from respondent No.2/ICICI Bank and executed a Corporate Guarantee deed dated 10.08.2016. It appears that the account of the borrower was declared as NPA² by the respondent No. 2/ICICI Bank sometime in December 2016 and thus respondent No. 2/ICICI Bank invoked the Corporate Guarantee *vide* letter dated 16.10.2017.
6. Shorn of unnecessary details, the borrower was admitted to CIRP³, which was eventually culminated into a Resolution Plan that was approved by the order dated 03.02.2022 passed by the NCLT⁴, which was further modified/clarified *vide* order dated 01.04.2022.
7. In the meanwhile, respondent No.2/ICICI Bank, also initiated CIRP against the petitioner *vide* CP (IB) No. 119/2021, based on the

¹ Corporate Debtor

² Non Performing Asset

³ Corporate Insolvency Resolution Proceedings

⁴ National Company Law Tribunal



failure of the petitioner to honour the Guarantee Deed dated 10.08.2016 and, thereby claiming an amount of Rs. 34.66 crores, which was admitted by the NCLT *vide* order dated 26.04.2023 for hearing.

8. Aggrieved thereof, the petitioner preferred an appeal, which came to be decided by the NCLAT⁵ *vide* order dated 02.07.2023, but was unsuccessful, and therefore, CA No. 7953/2024 was filed before the Supreme Court, which was dismissed. However, it was clarified as under:-

“ We, however, clarify that the issues and contentions available to the appellant, Seeta Shah, against the Corporate Insolvency Resolution Process will be examined and considered independent by the adjudicating authority.”

9. Although the petitioner submits that it has raised all the issues before the NCLT in terms of the aforesaid clarifications, it is now approaching this Court to seek directions against the respondent No.1/RBI. Learned counsel for the petitioner alluded to Clause (33) of the Corporate Guarantee Deed dated 10.08.2016 which reads as under:-

“33. Notwithstanding anything herein above stated our liability under this guarantee shall not exceed Rs.250 Million. This Guarantee will fall off in the event the outstanding of Borrower is less than or aggregate of Rs.2,180 Million out of Rs.2,500 Million (due as on date with ICICI Bank Limited under various facilities provided to the Borrower.)”

10. Learned counsel for the petitioner has urged that in the absence of any guidelines framed by respondent No.1/RBI, the petitioner is

⁵ National Company Law Appellate Tribunal



handicapped in making any proposal for the settlement of the Corporate Guarantee in term of Section 12-A⁶ of the IBC since respondent No.2/ICICI Bank has arbitrarily levied an inflated rate of interest, making a claim over and above the aforesaid clause in the Guarantee Deed to the tune of Rs.60 crores.

11. Alluding to the Clause 2.2.9(D) of the “Master Circular on Guarantees and Co-acceptance” in the exercise of powers under Banking Regulation Act, 1949⁷, it is submitted that the aforesaid guidelines leave much scope for manipulation on the part of the banks and financial institutions, thereby giving them unfettered powers to inflate their claims, which makes the settlement process almost impossible if not complicated.

12. Learned counsel for respondents No.2/ICIC Bank has urged that the present petition is not maintainable, as no directions can be sought against the RBI to frame a policy decision and it is urged that the present petition has been filed in order to encroach upon the powers of the NCLT, which is seized of the matter in CP (IB) No. 119/2021.

13. At the outset, the submissions advanced by learned counsel for the petitioner with regard to the paragraph 2.2.9 (D) of the aforesaid circular does not cut any ice. A bare perusal of the aforesaid clause would show that it applies to borrowers, who are already stressed. In such a scenario, the guidelines very rightly advise the Banks to be

⁶ [12A. Withdrawal of application admitted under section 7, 9 or 10. —The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent voting share of the committee of creditors, in such manner as may be specified.

⁷ Banks may also obtain guarantees at their discretion from the parent/holding company when credit facilities are extending to borrowing units in the same group.



more vigilant and ensure that whenever there emerges signs of financial stress, they may resort to seeking personal guarantees from the managements, directors and other managerial personnel, not only to secure their assets but also instil financial discipline. It may be stated that the banks are at liberty to seek guarantees at their discretion from parent companies and its directors, who are In-charge of its affairs and there is no question of untrammelled powers having been vested with the Banks.

14. The only plausible argument, which is advanced, is with regard to the legal purport of Clause (33) of the Corporate Guarantee dated 10.08.2016, which starts with an non-obstante clause and evidently restricts the financial liability of the guarantor to the extent of the amount restricted therein. On a careful perusal of clause (1) to (32), it *prima facie* appears that there is no question of provision for interest, while calculating the aforesaid Corporate Guarantee except to the extent of the amount provided therein.

15. Be that as it may, the NCLT is only seized of the matter and it is competent to decide upon the quantum of the claims that would impact the entire CIRP proceedings, including but not limited to the valuation of the Resolution Plans and the ability of the petitioner to settle the proceedings under Section 12-A of the IBC.

16. Learned counsel for the petitioner pointed out that the proceedings are listed for hearing before the NCLT on 22.08.2024.

17. In view of the above, the present writ petition is disposed of with direction to the NCLT to decide the preliminary issue as regards applicability of Clause (33) of the Corporate Guarantee dated



10.08.2016 within four weeks of hearing fixed on 22.08.2024 for an effective CIRP proceedings at its end.

18. The writ petition is disposed of, accordingly.

19. The pending application also stands disposed of.

DHARMESH SHARMA, J.

AUGUST 13, 2024/sa