

07.01.2025
SI No.6
Court No.37
(gc)

**In the High Court at Calcutta
Civil Appellate Jurisdiction
(Commercial Division)**

**FMAT 504 of 2024
CAN 1 of 2025**

**Sri Vineet Mohan Gupta & Anr.
Vs.
Canara Bank & Ors.**

Mr. Jishnu Chowdhury,
Mr. Ishaan Saha,
Mr. Tanay Agarwal,
Mr. Shivam Bhimsaria,
Ms. Akansha Singhanian
...for the Appellants.
Mr. Supriyo Ranjan Mahapatra,
Ms. Kishwar Rahman
...for the Respondent No.1.

1. The appeal is arising out of an order passed by the learned Commercial Court at Rajarhat in connection with an application for injunction. The learned Commercial Judge refused ex parte ad interim injunction order on the ground that there could be a probability of SARFAESI proceeding be initiated against the appellants and in view of bar of any civil proceeding under Section 34 of the SARFAESI Act, 2002, inasmuch as their other collateral issues that are required to be decided in presence of the respondents it would not be prudent to allow any ex parte ad

interim injunction or order. This impugned order dated 25th November, 2024 is a subject matter under challenge.

2. Mr. Jishnu Saha, learned Counsel appearing on behalf of the appellants has submitted that the learned Single Judge has completely misdirected its mind in making reference to SARFASEI proceeding while the contention of the appellants were confined to the arbitrary action of Canara Bank in refusing to discharge the guarantees furnished by the appellants.
3. It appears that Gupta Power Infrastructure Limited was enjoying the working capital facility from different financial institutions under consortium agreement on which Canara Bank is the lead banker. The petitioners are the sons of one Mr. Bhagat Ram Gupta who was one of the directors and guarantors and after his demise the petitioners furnished guarantee. It is alleged that they were coerced to execute such deed of guarantee. However, the basis for discharge of the said guarantee is based on a communication dated 27th October, 2022 from Canara Bank which in Note at page 597 records the following:-

“Note: PGs of Sri Vineet Mohan Gupta and Sri Manmohan Gupta (legal heirs of late Bhagat Ram Gupta) were released, subject to similar permissions from other members. Certain banks are yet to release their personal guarantees. Pending the same, joint documentation as on 01.10.2021 has been executed including their personal guarantees. The same shall continue till permission from all banks is received.”

4. Mr. Jishnu Chowdhury, learned Counsel appearing on behalf of the appellants submits that record would reveal that some of bankers have although released the petitioners and few had arbitrarily withheld the permission notwithstanding the fact that the lead banker had discharged the guarantee documents. The observation of the learned Commercial Judge of applicability of the SARFAESI Act may not be relevant. It is submitted that the order would show that the learned Commercial Judge has proceeded on the basis that Section 34 of the SARFAESI Act would be a bar in granting a relief and hence rejected the prayer for ex parte ad-interim order.
5. Mr. Supriyo Ranjan Mahapatra, learned Counsel appearing on behalf of the Canara Bank has submitted that the appellants have

not been discharged from their respective guarantees and insolvency proceeding has been initiated against the borrower company. It is further submitted that legal notice has been served upon the appellants as well since they are guarantors. However, whether SARFAESI proceeding has been initiated or not, the learned Counsel has no instruction.

6. It is submitted on behalf of the appellants that the matter is fixed on 16th January, 2025 for further hearing.
7. In the conspectus of the facts while we agree that the learned Commercial Court was justified in refusing to pass ex parte ad-interim order, however, prima facie being satisfied that no SARFAESI proceeding is pending or initiated or could have been initiated against the present appellants, in the event no such material is produced before the learned Commercial Court with regard to the SARFAESI proceeding, the observation made with regard to the SARFAESI proceeding shall not be a bar in deciding the application of the appellants on merits after giving a reasonable opportunity of hearing to the Canara Bank.
8. We also record that till date no coercive step has been taken against the appellants

excepting that a legal notice has been served upon the appellants. Any steps pursuant to the demand notice shall abide by the result of the suit pending before the Commercial Court.

9. Mr. Mahapatra has submitted that this order shall not preclude him from proceeding under IBC. It is not necessary for us to give such liberty, if such recourse is otherwise available to the Canara Bank under the law.
10. Accordingly, the appeal and the application are disposed of.
11. However, there shall be no order as to costs.
12. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)