IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAW) No.3022 OF 2024
IN
WRIT PETITION No.7416 OF 2017 (D)

(Sunil Hitech Engineers Limited, Nagpur Vs. Bend Joints Private Limited, Madhya Pradesh)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Mr. S. Maheshwari, Advocate for petitioner.
Ms. Payal Lunawat, Advocate for respondent.

CORAM : R.M. JOSHI, J.
DATE : 8th JULY, 2025.

1. This application is filed by the Liquidator of the petitioner company in Writ Petition No.7416/2017 which came to be disposed of on 14th June, 2022. Admittedly, during the pendency of the said petition petitioner company was directed to deposit a sum of Rs.14,56,356/-. The petition is disposed of without any directions for the disbursement of the said amount. This has resulted in filing of the present application by the original petitioner for withdrawal of the amount.

2. Learned counsel for the petitioner has placed reliance on the judgment of the Division Bench of this Court in the case of **Siti Networks Limited Vs. Rajiv Suri**, reported in **2024 SCC OnLine Bombay 3550** to submit that the issue involved in this application is covered by the said judgment. It is further argued that since the respondent has already filed claim before the Liquidator, question of permitting it to receive amounts deposited in this Court does not arise.

3. Learned counsel for the respondent resisted the application essentially relying upon the observations made by the Hon'ble Supreme Court in paragraph 13 in case of **P.S.L. Ramanathan Chettiar and others Vs. O.R. M.P.R.M. Ramanathan Chettiar,** reported in **1965 0 Supreme (SC) 71.**

4. There is no dispute about the fact that this judgment was duly considered by the Division Bench of this Court in the case of *Siti Network Limited* (supra). The Division Bench of this Court in paragraph 52 to 55 has held as follows :

> "***52.*** *Meanwhile, under the IBC, a statutory fetter on the deposit has come into operation. In Axis Bank, the Supreme Court has ruled that the pre-deposit not being a bailment must be returned to the borrower unless there is any attachment of the amount under any law. In the instant case, the moratorium on the enforcement of a claim for execution of a decree has commenced, and upon failure of the CIRP, the asset would form part of the liquidation estate. As stated in Byju case, the asset is meant to be distributed to the creditors in proportion to what is owed to them, and one of the creditors cannot steal a march over the others by being paid out specially outside the CIRP or the liquidation.*
>
> *Conclusions and Directions:*
>
> ***53.*** *Therefore, the pleadings considered by the Supreme Court in this very case on the very same question, and the resultant outcome of releasing the ICICI guarantee, make it clear that security interests over the assets of the corporate debtor in order to secure amounts due from the corporate debtor under a judgment or decree would give way to the provisions of the IBC. The proceedings under the IBC may lead to an approved resolution plan or liquidation of the corporate*

debtor. Therefore, it is not appropriate to continue to hold the position that the interplay between the rights of a judgment creditor and the implications of insolvency law as existing in 1924 (in terms of Chowthmull case) would still apply in 2024, when the IBC governs the field of insolvency and bankruptcy of corporate debtors. We have also explained above the real import of the ruling by the co-ordinate Division Bench in the Nahar HDIL case, which was essentially to make the release of the amount deposited under Section 9 of the Arbitration Act, to the judgment creditor in the arbitration proceedings, subject to the provisions of IBC. Since another co-ordinate Bench in Rajendra Bansal case proceeded to release funds deposited by a corporate debtor to the judgment creditor on its reading of Chowthmull case and Nahar HDIL case, it is clarified that the ruling in Rajendra Bansal applies only to the parties in that case, although the statement of law as contained therein, has been overtaken, as explained above. Since the Supreme Court has conclusively released the ICICI Guarantee in this very case, no question of law remains for reference to any larger bench.

54. *In the result, we hold that taking into account the decision of the Supreme Court in respect of the ICICI guarantee, and that too based on similar pleadings made by the parties before the Supreme Court; and also taking into account the provisions of the IBC and its implications for decree holders, the monies deposited in this Court are indeed assets under the ownership of the applicant-appellant, with possession being in the hands of the Court. No meaningful purpose would be served in continuing with the deposit, since even if the appeal were to fail, the respondent would need to be subjected to the CIRP run by the Committee of Creditors through the resolution* *professional. If the resolution attempts fail, the respondent's rights under the impugned judgment would be subject to the waterfall mechanism for distribution of liquidation proceedings, stipulated under the IBC.*

55. *In the result, in view of the CIRP proceedings pending in relation to the Applicant-Appellant:-*

A) we hold that monies or any other asset deposited by a corporate debtor in court prior to commencement of CIRP by way of security (to protect against execution of any judgment or decree), would not cease to be the asset of the corporate debtor;

B) consequently, the monies deposited by the applicant-appellant in this Court constitute assets owned by the applicant-appellant although they are not in possession of the applicant-appellant;

C) therefore, we hereby permit the applicant-appellant to withdraw Appeal No. 597 of 2016, and indeed withdraw the amounts deposited in this Court in these proceedings, along with all earnings thereon. Refund of court fees shall be processed as per Rules;

D) the amounts deposited in Court shall be released to the applicant-appellant within a period of two weeks from today, subject to compliance with the procedural rules of this Court, administered by the Registry; and

E) the substantive rights of the respondent who is the judgment creditor under the impugned judgment shall be subject to the provisions of the IBC."

5. Apart from this position of law, when admittedly the respondent has filed the claim before the Liquidator question of permitting it to withdraw amount deposited in this Court does

not arise. Moreover, while disposing of the petition there is no specific direction permitting the respondent to withdraw the amount deposited on the contrary, remedies to respondent are kept open.

6. Considering the judgment of the Division Bench of this Court and having regard to the facts of the case it can be held that the amount deposited by the petitioner company in Writ Petition No.7416/2017 is asset of petitioner in the hands of this Court. Mere dismissal of the petition would not change the nature of the said asset of petitioner company. In the aforesaid facts coupled with law on the point involved herein there is no impediment in permitting the original petitioner to withdraw the amount deposited along with accrued interest.

7. Application, therefore, stands allowed in terms of prayer clause (A).

(R.M. JOSHI, J.)

Wadode

Signed by: Mr. Devendra Wadode
Designation: PS To Honourable Judge
Date: 11/07/2025 16:10:46