IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7191 OF 2026

Suraj Shriniwas Zanwar and Ors .. Petitioners

IDBI Bank Ltd and Ors .. Respondents

Mr. Anshul Anjarlekar, i/b Raval Shah and Co., for the Petitioners.
Mr. Rishi Thakur, a/w D. Gala, i/b Rishi Thakur, for Respondent Nos. 1 to 4.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.

DATE : 15TH JUNE 2026.

PC:

1. Heard learned counsel for the Petitioners.

2. Although this petition has come up for consideration for the first time, the contesting Respondent No. 1 IDBI Bank is represented by counsel and therefore, the learned counsel for the petitioners and the contesting respondent were heard.

3. The grievance of the petitioners in this petition is that despite the dues of the Respondent No. 1, one of the secured creditors, being satisfied by disbursal of amounts in terms of the approved resolution plan in proceedings undertaken before the National Company Law Tribunal, Mumbai (NCLT), the Respondent No. 1 is proceeding against the petitioners

as personal guarantors, which ought not to be permitted. It is the case of the Petitioners that the amounts identified in the approved resolution plan have been admittedly disbursed in favour of the Respondent No. 1 – Bank and therefore, it cannot be permitted to invoke the personal guarantees under the scheme of the Insolvency and Bankruptcy Code, 2016 (IBC).

4. The learned counsel for the Respondent No. 1 – Bank submits that the contentions being raised on behalf of the Petitioners are in the teeth of the law laid down by the Supreme Court in this context in the case of ***Lalit Kumar Jain vs Union of India and Ors*** *[(2021) 9 SCC 321].* He relies upon the said judgment to contend that even if the resolution plan concerning the corporate debtor stands approved and the amounts recorded therein have been paid to the Respondent No. 1 Bank, the petitioners, as personal guarantors, are not discharged of their liability and that the Respondent No. 1 bank is entitled in law to proceed against them. It is emphasized that in such situations, where the recovery process is interdicted by involuntary act of insolvency under the provisions of the IBC, as per the law laid down by the Supreme Court in the said judgment, the liability of the personal guarantors continues.

5. It is further brought to the notice of this Court that in pursuance of the personal guarantees of the petitioners being invoked, a proceeding has been initiated on behalf of the Respondent No. 1 before the NCLT, wherein

the petitioners are parties. On 11/05/2026, the NCLT has appointed a resolution professional and the matter is now to be listed for further consideration. It is submitted that in such a situation, the petitioners certainly can approach the resolution professional and / or NCLT to ventilate their grievances.

6. We have considered the rival submissions. We find that the position of law as laid down by the Supreme Court in the case of Lalit Kumar Jain vs Union of India and Ors (supra), completely covers the position in favour of the Respondent No. 1 bank. The relevant portion of the said judgment reads as follows:

> "115. The other question which parties had urged before this court was that the impugned notification, by applying the Code to personal guarantors only, takes away the protection afforded by law; reference was made to Sections 128, 133 and 140 of the Contract Act; the petitioners submitted that once a resolution plan is accepted, the corporate debtor is discharged of liability. As a consequence, the guarantor whose liability is co-extensive with the principal debtor, i.e. the corporate debtor, too is discharged of all liabilities. It was urged therefore, that the impugned notification which has the effect of allowing proceedings before the NCLT by applying provisions of Part III of the Code, deprives the guarantors of their valuable substantive rights.
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> ……… …….
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> 118. All creditors and other classes of claimants, including financial and operational creditors, those entitled to statutory dues, workers,

etc., who participate in the resolution process, are heard and those in relation to whom the CoC accepts or rejects pleas, are entitled to vent their grievances before the NCLT. After considering their submissions and objections, the resolution plan is accepted and approved. This results in finality as to the claims of creditors, and others, from the company (i.e. the company which undergoes the insolvency process). The question which the petitioners urge is that in view of this finality, their liabilities would be extinguished; they rely on Sections 128, 133 and 140 of the Contract Act to urge that creditors cannot therefore, proceed against them separately.

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120. The rationale for allowing directors to participate in meetings of the CoC is that the directors' liability as personal guarantors persists against the creditors and an approved resolution plan can only lead to a revision of amount or exposure for the entire amount. Any recourse under Section 133 of the Contract Act to discharge the liability of the surety on account of variance in terms of the contract, without her or his consent, stands negated by this court, in V. Ramakrishnan where it was observed that the language of Section 31 makes it clear that the approved plan is binding on the guarantor, to avoid any attempt to escape liability under the provisions of the Contract Act. It was observed that:

> "25. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor…." And further that:
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> "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 67 2019 SCC OnLine SC 103 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."
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> ……. …..

122. It is therefore, clear that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this court has indicated, time and again, that an involuntary act of the principal debtor leading to loss of security, would not absolve a guarantor of its liability. In Maharashtra State Electricity Board (supra) the liability of the guarantor (in a case where liability of the principal debtor was discharged under the insolvency law or the company law), was considered. It was held that in view of the unequivocal guarantee, such liability of the guarantor continues and the creditor can realize the same from the guarantor in view of the language of Section 128 of the Contract Act as there is no discharge under Section 134 of that Act. This court observed as follows:

> "7. Under the bank guarantee in question the Bank has undertaken to pay the Electricity Board any sum up to Rs 50,000 and in order to realise it all that the Electricity Board has to do is to make a demand. Within forty-eight hours of such demand the Bank has to

pay the amount to the Electricity Board which is not under any obliga- tion to prove any default on the part of the Company in liquidation before the amount demanded is paid. The Bank cannot raise the plea that it is liable only to the extent of any loss that may have been sustained by the Electricity Board owing to any default on the part of the supplier of goods i.e. the Company in liquidation. The liability is absolute and unconditional. The fact that the Company in liquidation i.e. the principal debtor has gone into liquidation also would not have any effect on the liability of the Bank i.e. the guarantor. Under Section 128 of the Indian Contract Act, the lia- bility of the surety is coextensive with that of the principal debtor unless it is otherwise provided by the contract. A surety is no doubt discharged under Section 134 of the Indian Contract Act by any contract between the creditor and the principal debtor by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. But a discharge which the principal debtor may secure by operation of law in bankruptcy (or in liquidation pro- ceedings in the case of a company) does not absolve the surety of his liability (see Jagannath Ganeshram Agarwala v. Shivnarayan Bhagirath [AIR 1940 Bom 247; see also In re Fitzgeorge Ex parte Robson [(1905) 1 KB 462]).”

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125. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability,

which arises out of an independent contract."

7. The above quoted portion of the said judgment makes abundantly it clear that the Respondent No. 1 bank is entitled in law to proceed against the petitioners and that it cannot be said that the mere approval of the resolution plan, and amounts being received by the Respondent No. 1 thereunder, would deprive it of invoking the personal guarantees of the petitioners.

8. In view of the above, we do not find any reason to entertain this writ petition for the reliefs sought therein. Accordingly, the writ petition is dismissed.

9. However, it is made clear that the petitioners are at liberty to approach the resolution professional and/or the NCLT to ventilate their grievances. In that regard, all rights and contentions are kept open. Pending applications, if any, are also disposed of.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**