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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 9701 of 2024

UV Asset Reconstruction Company Limited ... Appellant

Versus

Electrosteel Castings Limited ... Respondent

J U D G M E N T

ALOK ARADHE, J.

INTRODUCTION

1. This appeal under Section 62 of Insolvency and Bankruptcy Code, 2016 (hereinafter, referred to as the 'Code') calls in question the legality and correctness of the judgment dated 24.01.2024 by the National Company Law Appellate Tribunal (NCLAT), whereby, the NCLAT affirmed the order dated 24.06.2022 passed by the Adjudicating Authority (NCLT) rejecting the application filed by the appellant under Section 7 of the Code.

(ii) ISSUE

2. The central issue arising for consideration in the present appeal pertains to the interpretation of Clause 2.2 of Deed of Undertaking dated 27.07.2011 executed between SREI

Infrastructure Finance Limited (SREI), the original creditor, which subsequently assigned all its rights and interests in favour of UV Asset Reconstruction Company Limited, the appellant; Electrosteel Steels Limited (ESL), the borrower; and Electrosteel Castings Limited (ECL), the erstwhile promoter of ESL and obligor in the Deed of Undertaking. The Controversy lies in determining whether said Clause constitutes a contract of guarantee within the meaning of Section 126 of the Indian Contract Act, 1872 (Act) thereby rendering ECL as a guarantor to SREI in respect of financial facilities availed by ESL from SREI.

(iii) FACTUAL BACKGROUND

3. Briefly stated, the facts leading to filing of present appeal, are as follows. ESL availed financial assistance of INR 500 crores from SREI pursuant to sanction letter dated 26.07.2011. Under the sanction letter, the only security for the facility comprised a demand promissory note and post-dated cheques. The sanction letter did not stipulate any requirement for a personal or corporate guarantee from the ECL. However, ECL being the promoter of ESL was required to furnish an undertaking to arrange for the infusion of funds.

4. On the same day, SREI issued an addendum to the sanction letter, providing for an additional security for the facility in the form of subservient charge over movable and project assets of ESL. On 26.07.2011 itself, SREI and ESL executed a Rupee Loan Agreement. Clause (d)(3) of schedule 4 to the loan agreement, required the ECL to furnish an undertaking to arrange for infusion of funds to enable ESL, to comply with financial covenants.

5. In pursuance thereof, ECL, one of the promotors of ESL, executed a Deed of Undertaking, warranty, and indemnity dated 27.07.2011 (undertaking) whereby it undertook a limited obligation to arrange for infusion of funds into ESL. Clause 2.2 of the aforesaid guarantee provides that ECL shall arrange for infusion of such amount of funds into the ESL, as may be necessary to enable ESL to comply with stipulated financial covenants.

6. Subsequently on 21.11.2011, ESL, ECL and SREI entered into a supplementary agreement amending *inter alia* the facility agreement and the security package for the facility.

(iv) CORPORATE INSOLVENCY RESOLUTION PROCESS OF ESL

7. On 27.06.2017, State Bank of India, one of the lenders of ESL, filed an application on 27.06.2017 under Section 7 of the Code, before NCLT Kolkata, which was admitted on 20.07.2017. Thereafter, by an order dated 17.04.2018, passed under Section 31 (1) of the Code, the NCLT Kolkata, approved the resolution plan submitted by Vedanta for acquisition of ESL. Under the approved resolution plan, ESL was acquired for a total consideration of INR 12,719.14 crores, comprising upfront cash payment of INR 5,320.00 crores and conversion of balance amount into equity shares. The resolution plan duly was implemented.

8. Upon implementation of the resolution plan, SREI issued an unconditional 'no due certificate' to ESL certifying that dues owned by ESL to SREI stood fully discharged. However, SREI subsequently claimed that it has been allotted reduced amount of shares upon conversion of balance debt. On 30.06.2018, SREI executed a Deed of Assignment (Assignment Deed) in favour of the appellant, purporting to assign the alleged residual debt.

(v) PROCEEDING BEFORE NCLT

9. The appellant thereafter filed an application under Section 7 of the Code before the NCLT, Cuttack, asserting that; (i) a residual financial debt, remained payable by ESL despite implementation of the resolution plan, and (ii) ECL has furnished a corporate guarantee for the debt of ESL.

10. The NCLT, by order dated 24.06.2022, dismissed the petition filed by the appellant under Section 7 of the Code on two principal grounds; (i) ECL was not a guarantor in respect of financial facilities availed by ESL and, therefore no financial debt was owed by ECL, and (ii) the conversion of ESL's debt into equity under resolution plan resulted in extinguishment of any liability of ECL.

(vi) PROCEEDING BEFORE NCLAT

11. Aggrieved thereby, the appellant preferred an appeal before the NCLAT. The NCLAT in its judgment dated 24.01.2024 framed two specific issues for adjudication namely, (i) whether ECL was a guarantor to SREI for the financial facilities availed by ESL and (ii) whether approval of the resolution plan of ESL resulted in extinguishment, of entire debt, so as to bar any claim against the ECL as a guarantor or third party surety.

12. The NCLAT answered the first issue in the negative, holding that ECL cannot be construed as a guarantor under Clause 2.2 of Deed of Undertaking in respect of the financial facility extended by SREI to ESL. While answering the second issue, it held that approval of resolution plan extinguished the debt, *qua* ESL i.e., corporate debtor alone. It was further held that such extinguishment did not by itself, extend to third parties unless expressly provided in the plan. Nonetheless, the appeal was dismissed on the primary finding that ECL was not a guarantor. Hence, the present appeal.

(vii) <u>RIVAL SUBMISSIONS</u>

13. Learned senior counsel for the appellant contended that Clause 2.2 of the Deed of Undertaking, satisfies the requirements of a contract of guarantee as defined under Section 126 of the Act. It is submitted that Clause 2.2 envisages the ECL to discharge the obligation to infuse funds upon default of ESL in compliance of financial covenants. It is argued that Clause 2.2 involves two step process of discharging liability as a guarantor namely, (i) the first step is to fund ESL for such amounts, and (ii) second step is to eliminate the breach of default on the part of the borrower. It is submitted that the guarantee in question is "See

to it" type guarantee. In support of aforesaid submission, reliance has been placed on the decisions of House of Lords[1] and Court of Appeal[2].

14. It is argued that ECL had admitted its status as a guarantor in the pleadings before the Madras High Court[3] and this Court[4] and is therefore, estopped[5] from taking a contrary stand. Our attention has also been invited to the letters dated 30.06.2017 and 20.07.2017 sent by ESL to SREI, evidencing payment of INR 38 Crores by ECL to SREI which according to the appellant, reinforces the existence of guarantee obligation. It is urged that NCLAT erred in relying upon the sanction letter dated 26.07.2011 and information memorandum dated 27.10.2017 to negate the existence of the guarantee and the impugned order warrants interference in this appeal.

15. On the other hand, learned senior counsel for the respondent submitted that Clause 2.2 of the Deed of Undertaking, imposed only an obligation to arrange for infusion of funds and did not amount to a guarantee under Section 126 of the Act. In support

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[1] Moschi vs. Lep Air Services Ltd.: 2 WLR 1175 (per Lord Diplock).
[2] Associated British Courts vs. Ferryways [2009] EWCA Civ. 189 *and* Shanghai Shipyard Co. Ltd. vs. Reignwood International Investment (Group) Co. Ltd.: [2021] EWCA Civ. 1147 .
[3] CSD No. 18692 of 2019 *and* Order dated 05.11.2019 passed by Division Bench of Madras High Court.
[4] Judgment dated 26.11.2021 in Civil Appeal No. 6669 of 2021.
[5] Mumbai International Airport Pvt. Ltd. vs. Golden Chariot Airport and Ors. (2010) 10 SCC 422 (Para 43-50) *and* Nagindas Ramdas vs. Dalpatram Ichharam and Ors. (1974) 1 SCC 242 (para 27).

of the aforesaid submissions, reliance has been placed on the decisions of Bombay, Karnataka and Delhi High Courts[6]. It is pointed out that even the appellant in its pleading before NCLAT has admitted that undertaking is not a contract of guarantee. It is also pointed out that the sanction letter by SREI does not envisage facility being secured by any personal or corporate guarantee. It is contended that 'see to it' guarantee is not the type of guarantee contemplated under Section 126 of the Act and has not been adopted in Indian Common Law. It is submitted that ECL made a payment of INR 38 crores to SREI on 20.07.2017 on its own volition, in its capacity as promotor of ESL. It is further submitted that aforesaid payment was not made on account of any contractual obligation.

16. It is also urged that, it is well settled, that pleadings must be read as a whole and cannot be read selectively, out of context or in isolation. It is pointed out that the pleading was filed by the ECL in the proceeding initiated by the appellant to enforce mortgage security created by ECL in favour of SREI. In the said pleading, it was stated that ECL has given a guarantee which is

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[6] Yes Bank Limited v. Zee Entertainment Enterprises Limited and Ors, 2020 SCC OnLine Bom 11763 (Paras 50,53,59,62,67), United Breweries (Holding) Ltd. v. Karnataka State Industrial Investment and Development Corporation Ltd. and Others, 2011 SCC OnLine Kar 4012 (para 6,9) *and* Aditya Birla Finance Ltd. vs. Siti Networks, 2023 SCC OnLine Del 1290 (Para 26,237,238).

limited only to the mortgage property and the same is not personal. It is urged that reliance on the decisions in **Nagindas Ramdas** and **Mumbai International Airport Pvt. Ltd.** is misplaced. It is finally urged that detailed and reasoned orders passed by the NCLT and NCLAT do not call for any interference in this appeal.

(viii) <u>ANALYSIS</u>

17. We have given our thoughtful consideration to the rival submissions and have carefully perused the records. Section 126 of the Act defines a 'Contract of Guarantee', as a contract to perform promise, or discharge the liability, of a third person in case of his default. The essential ingredients of a guarantee, therefore, are (a) existence of principal debt, (b) default by the principal debtor and (c) a promise by the surety to discharge the liability of the principal debtor upon such default. Thus, a guarantee is a promise to answer for the payment of some debt, or the performance of some duty, in case of failure of another party, who is in the first instance, liable to such payment or performance[7]. A guarantee is a security in the form of right of action against a third party. In order to constitute a guarantee,

[7] **Conley (Re), ex p Trustee v Barclays Bank Ltd. (1938) 2 All ER 127, at 130-131 (CA)**

there has to be a specific undertaking or unambiguous affirmation to discharge the liability of a third person in case of their default.

18. A guarantee is governed by principles of construction generally governing other documents[8]. A guarantee being a mercantile contract, the Court does not apply to it merely technical rules but construes it so as to reflect what may fairly be inferred to have been the parties' real intention and understanding as expressed by them in writing and to give effect to it rather than not[9].

19. Now, we advert to Clause 2.2 of Deed of Undertaking dated 27.07.2011, which reads as under: -

> "2.2. Financial Covenants
>
> In the event the Borrower is not in a position to comply with the Financial Covenants in the Financing Documents, or has breached such Financial Covenants, **the Obligors will arrange for the infusion of such amount of fund into the Borrower** such that the Borrower is in a position to comply with the abovementioned Financial Covenants."

[8] **Raghunandan** v. **Kirtyanand, AIR 1932 PC 131, Eshelby** v **Federated European Bank Ltd. (1932) 1 KB 254** and **Kamla Devi v. Thakhratmal Land, AIR 1964 SC 859**

[9] **Halsbury's Laws of England, Vol 49, 5th Edition** and **Perrylease Ltd** v **Imecar AG, (1987) 2 All ER 378**

Thus, the aforesaid Clause obligates ECL to arrange for infusion of funds into ESL, so as to enable the borrower to comply with the stipulated Financial Covenants.

20. For an obligation to be construed as a guarantee under Section 126 of the Act, there must be a direct and unambiguous obligation of the surety to discharge the obligation of the principal debtor to the creditor. The clause neither records an undertaking to discharge the debt owed to the creditor nor does it contemplate payment to the lender in the event of the default. The clause contains a promise, not to the creditor to pay the debt upon default, but to the borrower to facilitate compliance with Financial Covenants. An undertaking to infuse funds into a borrower, so that it may meet its obligations cannot, by itself be equated with the promise to discharge the borrower's liability to the creditor. A mere Covenant to ensure financial discipline or infusion of funds does not satisfy the statutory requirements of Section 126 of the Act.

21. The sanction letter dated 26.07.2011 does not contemplate any personal or corporate guarantee. On the contrary, it specifically identifies the securities for the facilities and does not require ECL to stand as surety. The fact that no guarantee was furnished

by ECL is also borne out from the following documents: (i) information memorandum in the CIRP of ESL does not reflect any guarantee from the Respondent in connection with SREI's Facility under the category of Guarantee or Security Interest; (ii) In Schedule 1 to the Assignment Agreement, against the column titled "details of the guarantor/co-borrower", the parties to Assignment Agreement stated 'Nil' and (iii) Audited Financial Statement of ESL does not reflect any guarantee obligation towards SREI. Thus, contemporaneous documents reinforce the conclusion that parties never intended to create a contract of guarantee.

22. Section 126 of the Act mandates a guarantor to 'perform a promise' or 'discharge the liability' of a third person which necessarily implies a direct performance or discharge. A 'See to it' guarantee in English Common Law refers to an obligation upon the guarantor to ensure that principal debtor itself, performs its own obligation and the guarantor, therefore, is in breach as soon as principal debtor fails to perform. However, a 'See to it' guarantee does not include an obligation to enable the principal debtor to perform its own obligation. Such an

arrangement would not be a guarantee under Section 126 of the Act.

23. It is pertinent to note that payment of an amount of INR 38 crores by ECL to the appellant was not made on account of any contractual obligation. The said payment was made on 20.07.2017 in its capacity as a promotor of ESL. Such payment by itself does not give rise to any contract of guarantee, particularly when there is no contractual obligation of guarantee in the Deed of Undertaking.

24. It is well settled in law, that, pleadings must be read as a whole and cannot be read selectively out of context or in isolation. The appellant had initiated an action to enforce the mortgage security created by ECL in favour of SREI. In the aforesaid proceeding, ECL in its pleadings stated that it has given a guarantee which is limited to the mortgaged property with no personal recourse to ECL. The reliance of the appellant on the decisions of **Nagindas Ramdas** and **Mumbai International Airport Pvt. Ltd.,** is misconceived, as the aforesaid decisions are an authority for the proposition that if admissions are true and clear, they are the best proof of facts, admitted in the context of Section 58 of the Indian Evidence Act, 1872. Therefore, the

aforesaid decisions have no application to the fact situation of the case.

(ix) CONCLUSION

25. For the aforementioned reasons, we concur with the concurrent findings of NCLT and NCLAT that Clause 2.2 of the Deed of Undertaking does not constitute a contract of guarantee and that ECL cannot be treated as guarantor for the financial facilities availed by ESL. We, therefore, do not find any infirmity in the impugned judgment warranting interference in this appeal.

26. In the result, the appeal is dismissed. There shall be no order as to costs.

.....J.
[SANJAY KUMAR]

.....J.
[ALOK ARADHE]

NEW DELHI;
JANUARY 06, 2026.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 12367 of 2025

Electrosteel Castings Limited ... Appellant

Versus

UV Asset Reconstruction Company Limited ... Respondent

J U D G M E N T

ALOK ARADHE, J.

INTRODUCTION

1. The present appeal, instituted under Section 62 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, referred to as the 'Code') calls in question the judgment dated 24.01.2024 rendered by the National Company Law Appellate Tribunal (NCLAT), whereby, the NCLAT affirmed the order passed by the adjudicating authority (NCLT). The challenge in this appeal is confined to the findings recorded by NCLAT on Question No. (II), which are contained in paragraphs 48 to 59 of the impugned judgment.

2. For proper appreciation of the controversy involved, the material facts giving rise to the present appeal are set out hereinafter.

(ii) <u>FACTUAL BACKGROUND</u>

3. One Electrosteel Limited (ESL) had availed of financial assistance amounting to INR 500 crores from SREI Infrastructure Finance Limited (SREI), vide sanction letter dated 26.07.2011. SREI was the original creditor, which subsequently assigned all its rights and interest in favour of UV Asset Reconstruction Company Limited (ARC).

4. Under the sanction letter, the only security for the facility comprised a demand promissory note and post-dated cheques. The sanction letter did not stipulate any requirement for a personal or corporate guarantee from Electrosteel Castings Limited (ECL), the erstwhile promotor of ESL. However, ECL, being the promoter of ESL, was required to furnish an undertaking to arrange for the infusion of funds.

5. On the same day, an addendum to the sanction letter was issued by SERI, providing for an additional security for the facility in the form of subservient charge over movable and

project assets of ESL. On 26.07.2011 itself, SREI and ESL executed a Rupee Loan Agreement. Clause (d)(3) of schedule 4 to the loan agreement, required the ECL to furnish an undertaking to arrange for infusion of funds to enable ESL to comply with financial covenants.

6. In pursuance thereof, ECL executed a Deed of Undertaking, warranty, and indemnity dated 27.07.2011 (undertaking) whereby it undertook a limited obligation to arrange for infusion of funds into ESL. Clause 2.2 of the aforesaid guarantee provides that ECL shall arrange for infusion of such amount of funds into the ESL, as may be necessary to enable ESL to comply with stipulated financial covenants.

7. Subsequently on 21.11.2011, ESL, ECL and SREI entered into a Supplementary Agreement amending the facility agreement and the security package for the facility. As per Revised Term 3.1.6 in Schedule III to the aforestated Supplementary Agreement dated 21.11.2011, ECL offered the first mortgage on its land admeasuring Acres 102.3 Cents, with a factory building, together with all benefits and advantages accruing thereon, situated at Elavur Village, Ponneri Taluk, Chinglepet District, Tamil Nadu, to SREI.

Pursuant thereto, Declaration dated 23.11.2011 was executed by ECL in favour of SREI, creating an equitable mortgage by deposit of the title deeds of the aforestated property at Elavur Village. ECL recorded therein that the mortgage was to secure the due repayment, discharge and redemption by ESL to SREI of the financial assistance advanced or to be advanced by SREI to ESL.

(iii) <u>CORPORATE INSOLVENCY RESOLUTION PROCESS OF ESL</u>

8. On 27.06.2017, State Bank of India, one of the lenders of ESL, filed an application under Section 7 of the Code, before NCLT Kolkata, which was admitted on 20.07.2017. Thereafter, by an order dated 17.04.2018, passed under Section 31 (1) of the Code, the NCLT Kolkata, approved the Resolution Plan submitted by Vedanta for acquisition of ESL. Under the approved Resolution Plan, Vedanta was required to make a deposit of INR 5320 crores as upfront cash payment under the Resolution Plan in an escrow account to be distributed to the creditors of ESL towards 'Sustainable Debt'. The entire remaining financial debt amounting to INR 7399.13 crores was categorised as 'unsustainable debt' and was converted into 739,91,32,055

fully paid-up equity shares of ESL with face value of INR 10 each, as part of the Resolution Plan. SREI received INR 241.71 crores in cash and equity shares worth INR 336.19, crores in lieu of its total admitted claim of INR 577.90 crores.

9. Upon implementation of the Resolution Plan, SREI issued an unconditional 'no dues certificate' to ESL certifying full discharge of ESL's liability. However, SREI subsequently claimed that it was allotted reduced number of shares upon conversion of balance debt. On 30.06.2018, SREI executed a Deed of Assignment in favour of the ARC, purporting to assign the alleged residual debt.

(iv) <u>PROCEEDING BEFORE THE ADJUDICATING AUTHORITY</u>

10. The ARC thereafter filed an application under Section 7 of the Code before the NCLT, Cuttack, asserting that; (i) a residual debt, subsisted despite the implementation of the Resolution Plan, and (ii) ECL had furnished a corporate guarantee for the debt of ESL.

11. The NCLT, by an order dated 24.06.2022, *inter alia* held that the entire admitted debt of ESL stood repaid and discharged in full, pursuant to approval of the Resolution Plan, and that there was no surviving debt to be enforced against ECL. It

was further held that ECL was not a guarantor and that conversion of debt into equity resulted in extinguishment of liability. Accordingly, the application filed by ARC under Section 7 of the Code was dismissed.

(v) <u>PROCEEDING BEFORE NCLAT</u>

12. Aggrieved thereby, ARC preferred an appeal before the NCLAT. The NCLAT framed two issues for adjudication namely, (i) whether ECL was a guarantor to SREI for the financial facilities availed by ESL, and (ii) whether approval of Resolution Plan of ESL resulted in extinguishment of entire debt, barring any claim against ECL. The NCLAT answered the first issue in the negative, holding that ECL could not be construed as a guarantor under the Deed of Undertaking. While answering the second issue, NCLAT referred to Clause 3.2 (ix) of the Resolution Plan and minutes of the meeting of Committee of Creditors of ECL dated 29.03.2018, and held that it cannot be said that, after approval of the Resolution Plan, the entire debt stood extinguished and no recourse can be taken by the ARC against ECL. It was further held that finding recorded by the NCLT that 'approval of Resolution Plan has led to

extinguishment and effacement of entire debt of ESL' has to be read as a finding *qua* ESL only and the said finding cannot be read to mean that approval of Resolution Plan has led to extinguishment and effacement of entire debt against third parties as clearly contemplated in Clause 3.2 of the Resolution Plan. Nevertheless, the appeal was dismissed as ECL was not a guarantor. Hence, the present appeal.

(vi) <u>SUBMISSIONS ON BEHALF OF THE APPELLANT</u>

13. Learned senior counsel for the appellant confined the challenge in this appeal to the findings on issue No. (ii). It was contended that entire debt was recovered without any haircut through cash payment and conversion of debt into equity, and that conversion of debt into equity results in irrevocable discharge of the debt. It was submitted that the audited financial statement of ESL reflected no haircut, and subsequent reduction of share capital could not revive the debt.

14. It was argued that there is no concept of debt subsisting only against a guarantor, once it is discharged against the principal borrower and that Clause 3.2 (ix) of the Resolution Plan would have no application where the debt stood fully

extinguished. It is urged that, it is a well settled position in law that once a debt is converted into equity, the debt is discharged and pursuant to conversion, the creditor ceases to be a creditor and transforms, into a shareholder of the issuing company. In support of aforesaid submissions, reliance has been placed on a decision of Delhi High Court[1].

15. It is pointed out that there was no haircut to the financial creditors of ESL, as any haircut accepted by the lenders is a profit to the borrower which would have been recorded in the profit and loss account of ESL. It is submitted that capital reduction does not have the effect of reinstating the debt. It is pointed out that reduction of entire share capital of ESL and simultaneous consolidation of 50 equity shares of 20 paise into one equity share of Rs.10 occurred on 14.06.2018 i.e. eight days post conversion of debt to equity as a subsequent and independent step, and cannot be treated as a haircut or a diminution of receipts by the creditors through unpaid debt.

[1] **Commissioner of Income Tax** v. **Rathi Graphics Technologies Ltd. – 2015 SCC Online Delhi 14470**

16. It is also argued that NCLAT's reliance on its judgment[2] is misplaced. It is also contended that NCLAT's judgment in **Ushdev International Ltd.** is *per incuriam* and is contrary to the decision of this Court in **Lalit Kumar Jain[3].** In support of aforesaid submissions, reliance has been placed on Indian Accounting Standard 109, and decisions of Privy Council and this Court[4]. Lastly, it is urged that appeal be allowed.

(vii) <u>SUBMISSIONS ON BEHALF OF THE RESPONDENT</u>

17. *Per contra,* learned Senior Counsel for the respondent submitted that approval of a Resolution Plan does not *ipso facto* discharge the liability of the guarantor/third party. It was contended that the financial creditor took a substantial haircut on unsustainable debt and that Clause 3.2 (ix) expressly preserves the rights against the third parties and security providers. It is submitted that the Resolution Plan

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[2] **Committee of Creditors of Ushdev International Ltd. through State Bank of India** v. **Mr. Subodh Kumar Agarwal, Resolution Professional of Ushdev International Ltd. & Ors., Company Appeal (AT) (Ins) No. 172-173 of 2022**

[3] **Lalit Kumar Jain** v. **Union of India (2021) 9 SCC 321**

[4] **Indian Accounting Standards 109, Relevant @ Clause 3.3., Forbes** v. **Git & Ors.-1921 SCC OnLine PC 102 (Relevant Paragraphs- 8 to 11), Radha Sundar Dutta** v. **Mohd. Jahadur Rahim, 1958 SCC OnLine SC 38 (Relevant Paragraphs- 11 to 13), Ramkishorelal and Another** v. **Kamal Narayan, 1962 SCC OnLine SC 113 (Relevant Paragraph-12,13), Delhi Development Authority** v. **Karamdeep Finance and Investment India Pvt. Ltd & Ors., (2020) 4 SCC 136 (Para 36), IFCI Limited** v. **Sutanu Sinha & Ors.- 2023 SCC OnLine SC 1529 : (2024) 248 Comp Cas 217, Disortho S.A.S.** v. **Meril Life Sciences Private Ltd., 2025 SCC OnLIne SC 570 (Paras 26 to 28)**

did not provide the financial creditors, including SREI, with full value of unsustainable debt of ESL and the same provided that the rights of financial creditors will not be extinguished. Lastly, it is contended that no interference in this appeal is called for.

(viii) ISSUE FOR CONSIDERATION

18. The sole issue which arises for consideration in this appeal is, whether approval of the Resolution Plan of ESL resulted in extinguishment of entire debt, so as to bar any claim against the ECL as a security provider/promoter.

(ix) ANALYSIS AND FINDINGS

19. We have given our thoughtful consideration to the rival submissions and have perused the records. In order to answer the issue, it is apposite to take note of the admitted facts which are evident from mandatory contents of the Resolution Plan. The total admitted debt of financial creditors was INR 13,395.25 crores. Out of the said amount, an amount of INR 5320 crores was classified as sustainable debt which was to be paid upfront to the financial creditors. After upfront payment of sustainable debt to all financial creditors, an amount of INR 7619.24 crores was treated as

unsustainable debt. The said amount of unsustainable debt was to be converted to new equity shares of ESL amounting to INR 7619.24 crores. As per the Resolution Plan, the share capital of INR 2409.24 crores was to be added to the new equity shares of INR 7619.24 crores. Thus, total issued, subscribed paid up equity share capital of ESL was to become INR 10,028.44 crores comprising 1002.84 crores shares of Rs.10 each fully paid up.

20. The Resolution Plan contemplated steps to be taken which constituted an integral part of the Resolution Plan. Step 2 which was an integral part of the Resolution Plan contemplated that face value of entire ESL share capital, including the newly allotted 761.92 crores shares, was to be reduced from INR 10 each fully paid up to INR .20 fully paid up. As a result of reduction in the face value of the shares, the paid-up share capital of ESL was to be reduced from 10,028.44 crores.

21. Thus, the number of shares reduced from 1002.84 crores of INR .20 each to 20.06 crores shares of INR 10 each. Clause 3.2 (vii)(B) of the Resolution Plan envisages that financial creditors were to hold shares worth INR 152.38 crores

comprising 7.60% of the equity share capital of ESL. Ultimately, in view of unsustainable debt of INR 7619.24 crores under the Resolution Plan, the financial creditors were to receive shares worth only INR 152.38 crores. Therefore, it is evident that difference between INR 7619.24 crores and INR 152.38 crores visited upon the financial creditors vide the approved Resolution Plan. This fact is also indicated in the communication dated 02.06.2018 addressed by Vedanta to the Committee of Creditors of ESL. Annexure-A to the said documents shows that while initially in lieu of conversion of Unsustainable Debt of ESL, the total number of shares initially allotted to financial creditors was 739,91,32,055, upon reduction in face value and consolidation, these became 14,79,82,641 shares. SREI which was initially allotted 33,61,85,524 shares of INR 10 each on or around 06.06.2018, was on reduction of face value of shares received 67,23,710 shares of INR 10 each on or around 14.08.2018. Thus, it is evident that the Resolution Plan did not provide the financial creditors, including SREI, with the full value of unsustainable debt of ESL.

22. At this stage, it is apposite to take note of relevant extract of Clause 3.2 (ix) of the Resolution Plan, which read as under: -

> "…Furthermore, the company shall stand discharged of any default or event of default under any loan documents or other financing agreements or arrangements (including any aide letter, letter of comfort, letter of undertaking etc.) and all rights/remedies of the creditors shall stand permanently extinguished except any rights against any third party (including the Existing promoter) in relation to any portion of Unsustainable Debt secured or guaranteed by third parties. Furthermore, it is hereby clarified that upon approval of the Resolution Plan by the NCLT, no further consent of any creditor (Financial Creditor, Operational Creditor or otherwise) shall be required to implement the Resolution Plan. Notwithstanding anything contained in this Resolution Plan, if any third party guarantor or security provider (including the Existing Promoters) (who has guaranteed or secured any portion of that availed by the Company prior to Insolvency Commencement Date, including the Existing Promoters who have created pledge over shares of Electrosteel Castings Limited or the Company), makes any claim against the Company or Vedanta or the SPV on account of any invocation/enforcement of such guarantee or security provided, as the case may be (including the invocation of pledge over shares of Electrosteel Castings Limited or the Company) by the Financial Creditors of the Company in any circumstance (including on account of subrogation or equity), its Claim shall be settled at NIL value at par with the Claims of Operational

Creditors as set out in Section 3.4 ii of this Resolution Plan."

23. Thus, from perusal of the aforesaid Clause, it is evident that the Resolution Plan unequivocally provides that rights against any third party, including a security provider/existing promotor in relation to any portion of unsustainable debt, secured or guaranteed by such third parties, will not be extinguished. It further provides that, if any third-party security provider (including the Existing Promoter) who has guaranteed or secured any portion of debt availed by ESL prior to insolvency commencement date, including the Existing Promoter who have created pledge of shares of ECL or ESL, makes any claims against ESL or Vedanta or SPV on account of any invocation/enforcement of such guarantee or security provided, such claim should be settled at NIL value.

24. It is well settled that approval of the Resolution Plan does not *ipso facto* discharge a security provider of her or his liabilities under the contract of security. Clause 3.2 (x) of the Resolution Plan explicitly reserves the rights of financial creditors against such third parties, including security providers/existing promoters, in relation to the unsustainable debt.

(x) <u>CONCLUSION</u>

25. For the aforementioned reasons, the issue involved in the appeal is answered in the negative. The approval of the Resolution Plan of ESL does not result in extinguishment of entire debt, so as to bar any claim against the ECL as a security provider/third-party surety.

26. In view of preceding analysis, we do not find any infirmity in the impugned judgment of the NCLAT. The appeal is accordingly dismissed. There shall be no order as to costs.

.....J.
[SANJAY KUMAR]

.....J.
[ALOK ARADHE]

NEW DELHI;
JANUARY 06, 2026.