

**BEFORE THE DEBTS RECOVERY  
APPELLATE TRIBUNAL, AT: MUMBAI**

**Present: Mr Justice Ashok Menon, Chairperson**

**Misc. Appeal No. 65/2019**

**Between**

Ashok B Jiwrajka & Ors. ... Appellant/s  
V/s.  
Punjab National Bank ... Respondent/s  
Mr Dinesh Purandare, i/b Mr Jash J Dalia along with Mr. Keval  
Buddhdev & Zahra Lokhandwala, Advocate for Appellants.  
Mr Uday Kumar S. Nadar, i/b M/s. Anup Khaitan & Co., Advocate  
for Respondent.

**And**

**Misc. Appeal No. 66/2019**

**Between**

Ashok B Jiwrajka & Ors. ... Appellant/s  
V/s.  
Assets Care & Reconstruction Enterprise Ltd. ... Respondent/s  
Mr Dinesh Purandare, i/b Mr Jash J Dalia along with Mr. Keval  
Buddhdev & Zahra Lokhandwala, Advocate for Appellants.  
Mr Kulin N. Shah, Advocate for Respondent.

**And**

**Misc. Appeal No. 67/2019**

**Between**

Ashok B Jiwrajka & Ors. ... Appellant/s  
V/s.  
IDBI Bank Ltd. ... Respondent/s  
Mr Dinesh Purandare, i/b Mr Jash J Dalia along with Mr. Keval  
Buddhdev & Zahra Lokhandwala, Advocate for Appellants.

Mr Dhrumil Shah, i/b M/s. MDP & Partners, Advocate for Respondent.

**And**

**Misc. Appeal No. 71/2019**

**Between**

Ashok B Jiwrajka & Ors. ... Appellant/s  
V/s.

Union Bank of India ...Respondent/s

Mr Dinesh Purandare, i/b Mr Jash J Dalia along with Mr. Keval Buddhdev & Zahra Lokhandwala, Advocate for Appellants.

Mrs Rathina Maravarman, Advocate for Respondent.

**-: Common Orders dated: 02/03/2023:-**

The Appellants in Misc. Appeal 65/2019 are defendants Nos. 1 to 3 and 5 in Original Application (O.A.) 1518 of 2018 on the files of the Debts Recovery Tribunal-II, Ahmedabad (D.R.T.) an application filed by the 1<sup>st</sup> Respondent therein, namely Oriental Bank of Commerce which now stands substituted by the Punjab National Bank into which it merged. The Appellants in Misc. Appeal 66/2019 are defendants Nos. 1 to 3 and 6 in Original Application (O.A.) 132 of 2019 on the files of the Debts Recovery Tribunal-II, Ahmedabad (D.R.T.), an application filed by the 1<sup>st</sup> Respondent therein, namely Assets Care and Reconstruction Enterprise Ltd. The Appellants in Misc. Appeal 67/2019 are defendants Nos. 1 to 4 in Original Application (O.A.) 139 of 2019 on the files of the Debts Recovery Tribunal-II, Ahmedabad (D.R.T.), an application filed by the 1<sup>st</sup> Respondent therein, namely the IDBI Bank. While the Appellants in Misc. Appeal 71/2019 are defendants Nos. 1 to 3 and 5 in Original Application (O.A.) 998

of 2018 on the files of the Debts Recovery Tribunal-II, Ahmedabad (D.R.T.) which is an application filed by the 1<sup>st</sup> Respondent therein, namely the Corporation Bank, which now stands substituted by the Union Bank of India into which it merged. The Appellants in these Appeals are mostly identical, and the reliefs sought and the issues to be determined are similar. Hence, the Misc. Appeals are all disposed of by a common order.

2. The first Respondents in all these appeals are creditors who had filed the aforementioned O.As. for recovery of money allegedly due from the defendants therein. The Appellants as defendants had filed written statements to the O.As. Thereafter, they filed I.As. Nos. 1484, 1797, 942, and 943 of 2019 respectively in the O.As. for amendment of their written statements. The prayers seeking an amendment to the written statements were identical. In those applications for amendment, it was contended that the National Company Law Tribunal (NCLT) had vide order dated 08/03/2019 approved a resolution plan which would affect their liability and defence. Hence, the Appellants sought to amend their written statements incorporating the facts regarding the resolution plan sanctioned and approved with regard to the debt due from the defendants and the corporate borrower.

3. The applications for the amendment were all opposed by the creditor banks for the reason that there is much delay in filing this application for amendment. The NCLT approved the resolution plan on 08/03/2019 whereas the applications for amendment is filed much later. The only intention of the Defendants in filing the applications for amendment is to delay the adjudication in the O.As.

It is also stated that a written statement is required to be filed within 30 days and can only be extended for a further period of 15 days by the D.R.T. for reasons to be recorded. Moreover, the NCLT proceedings and the approval of the resolution plan pertain to the corporate borrower alone. The Appellants are guarantors and therefore, the realisation of debt from the guarantors cannot be obstructed on the ground that Insolvency and Bankruptcy Code, 2016 (I.B.C.) proceedings are pending against the principal borrower.

4. After considering the rival contentions raised by both sides, though the Ld. Presiding Officer in identical orders, observed that for a fair adjudication of the case and to impart justice, subsequent events can be incorporated by way of an amendment subject to the provisions of the Limitation Act, depending on the merits of the individual case, all subsequent events cannot be incorporated by way of amendment. Relying on the decision of the judgment of the Hon'ble Supreme Court in *State Bank of India vs. V. Ramakrishnan Civil Appeal No. 3595 of 2018*, came to the conclusion that guarantors are kept out from the insolvency proceedings against a corporate debtor under I.B.C. and that recovery proceedings against the guarantors may go ahead despite the proceedings against the principal debtor. Hence, the Ld. Presiding Officer came to the conclusion that the proceedings against the corporate debtors under the I.B.C. would have no impact on the recovery proceedings against the guarantors. The moratorium or extended time granted to the corporate debtors from the recovery proceedings is not available to individual guarantors. Under the circumstances allowing

the application for amendment of written statement would go against the legislative intent, opines the Ld. Presiding Officer. It is also observed that the proceedings before the NCLT against the corporate debtor and approval of a resolution plan to facilitate the corporate debtor will not have any bearing on the recovery proceedings against the guarantors. It is further observed that the application for amendment is nothing but a tactic of the defendants to delay the proceedings and to procure some orders on Misc. Applications somehow to challenge the same on the pretext of legal remedy before higher Forums. Hence the applications were all dismissed imposing a cost of ₹1 lakh in each of the applications upon the defendants to be paid to the National Defence Fund. The Appellants are aggrieved and hence in appeal.

5. Heard Mr Dinesh Purandare, the Ld. Counsel appearing for the Appellants and Mr Kulin N. Shah and the other counsel appearing for the 1<sup>st</sup> Respondent in each of the Appeals. Records perused.

6. It is noticed that the Appellants had filed their written statements before the resolution plan was approved by the NCLT on 08/03/2019. The proceedings before the NCLT were pending against the principal debtor when the O.As. were filed by the 1<sup>st</sup> Respondent Banks. There is absolutely no quarrel about the proposition that granting reliefs under the insolvency proceedings to the corporate debtor will not have any bearing on the claim against the guarantors and that both stand on a different footing. But at the same time, it has to be borne in mind that the debt to be recovered from the company is the same as sought to be recovered

from the individual guarantors. If there are certain directions made in the resolution plan for the corporate debtor to clear the debts, the guarantors can also bring that fact to the notice of the D.R.T. while considering their liability to the creditor. A delay in filing the application for amendment is not a ground for rejecting it outright at the threshold. The merits of the pleadings sought to be incorporated in the written statement by way of amendment cannot be decided before it is made part of the defence set up by the defendants. The judgment of the Hon'ble Supreme Court relied upon by the Ld. PO would only hold that there is no embargo in proceeding against the individual guarantors for the realisation of debt in spite of the insolvency proceedings pending against the corporate debtor. In the written statement filed by the defendants, there is a specific pleading regarding a resolution plan being considered by the NCLT. It is only subsequent to the filing of the written statement that the resolution plan was approved. There is absolutely nothing wrong in incorporating the details of the resolution plan by way of amendment to the written statement. Whether it has to be accepted to grant any concession to the defendants who are guarantors, is for the D.R.T. to consider and decide. The contention of the Respondents that the written statements are to be filed within a stipulated time, and that the D.R.T. cannot extend that time beyond 15 days, is no reason to decline the amendments.

Under the circumstances, I find that the Ld. Presiding Officer was not justified in dismissing the amendment application at the threshold. Neither the SARFAESI Act nor the RDB Act prohibits

the amendment of pleadings. The D.R.T. is therefore governed by the procedural guidelines available as per Order 6 Rule 17 of the Code of Civil Procedure in matters concerning the amendment of pleadings. From the above angle, when one examines the provisions of Order 6 Rule 17 of the CPC, it becomes without a doubt that the power to allow an amendment is vested in the D.R.T. to ensure that the real questions in controversy between the parties are appositely determined(See *Veena Prabhakumar vs. Dhanlaxmi Bank 2019 SCC OnLine Ker 1640*)

The Misc. Appeal is allowed in the impugned order dated 09/08/2019 of the D.R.T. is set aside, and I.A. No. 1797 of 2019 in O.A. No. 132 of 2019 for amendment of the written statement stands allowed. The cost of ₹1,00,000/- directed to be paid in each of the impugned orders shall also stand set aside, and the amount deposited by the Appellants in this Tribunal while admitting the Appeals shall be refunded to them. The amendment shall be carried out within two weeks of receipt of a copy of this order by the D.R.T. The Misc. Appeals are allowed as above.

Sd/-  
Chairperson

mks-1-4