IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3057 OF 2026
WITH
INTERIM APPLICATION NO. 3999 OF 2026

IN

WRIT PETITION NO. 3057 OF 2026

Nanda Takwane and Ors	..	Petitioners
Versus		
The State of Maharashtra Through GP and Ors	..	Respondents

WITH
WRIT PETITION NO. 13469 OF 2025
WITH
INTERIM APPLICATION NO. 2290 OF 2026
IN
WRIT PETITION NO. 13469 OF 2025

Nanda Takwane	..	Petitioners
Versus		
Sub-Registrar Co-operative Society & Ors	..	Respondents

Adv. Shyam Kapadia a/w Pranav Avhad, Darshna Naval, Khusi Bagaria, Nimisha Nagpal, Shamant Sathiya, i/b Darshna Naval for the petitioner in WP No. 3057 of 2026 and for the Applicant in IA No. 3999 of 2026.
Adv. Anushka Singh i/b Neel Kothari for the petitioner in W.P. No. 13469 of 2025.
Adv. Veerdhaval Kakade i/b Sambhaji Jagtap for Respondent No.2 and 4 in W.P. No. 3057 of 2026.
Adv. Kishore Patil i/b Sidheshwar N. Biradar a/w Omhari B. Fawade for Respondent No.3 in W.P. No. 13469 of 2025.
Mr. O.A. Chandurkar, Addl. G.P. a/w K.B. Thorat ‘B’ Panel Advocate for State in W.P. No. 3057 of 2026.
Mr. O.A. Chandurkar, Addl. G.P. a/w Ms. P.N. Diwan, AGP for State in WP No. 13469 of 2025.

Ashish

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
RESERVED ON : 17th JUNE, 2026
PRONOUNCED ON: 7th JULY, 2026

JUDGMENT (PER BHARATI DANGRE J):-

1. Writ Petition No.13469 of 2025, filed by Nanda Takwane, raises a challenge to the order dated 02/05/2022 passed by the Deputy Registrar, Cooperative Societies, Pune, under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short '**the Ac**t'), along with the order dated 28/12/2023 passed by the District Collector under Section 156 of the Act, for executing the order of 02/05/2022 through the Tahsildar Office, Daund. The Respondent No.2, the Deputy Registrar, had decreed the claim of Seva Vikas Co-operative Bank, presently under liquidation, for recovery of an amount exceeding Rs. Ten Crore against the Petitioner.

The Petition also raises a challenge to the impugned notices addressed to the Petitioner by the Tahsildar seeking to attach the subject property set out in the schedule exhibited at Exhibit-A, situated in Gat No. 394/3/B, with an approximate area of 02 H 00R, along with the constructive area of RCC structure and a Mangalkaryalay admeasuring 26,444 sq. ft.

The Petition, therefore, seeks quashing of the impugned orders/notices as according to the Petitioner, the entire action initiated against her is in violation of the protection granted in form of moratorium under the Insolvency and Bankruptcy Code, 2016 (for short, 'the Code') and in particularly under Section 95 and 96 thereof.

In the second Writ Petition No. 3057 of 2026, filed by four Petitioners, the challenge is raised to the order dated 19/06/2019, once again passed by the Deputy Registrar of Cooperative Societies, and the further orders dated 31/05/2022 and 1/06/2022 passed by the District Magistrate under Section 156 of the Act read with Rule 107 of Maharashtra Co-operative Societies Rule, 1961. A challenge is also raised to the impugned notices issued by the Tahsildar Office seeking possession of the mortgaged properties against the dues purportedly payable under the Order passed under Section 101 of the MCS Act. Even in this case, the Petitioners objected to the proceedings by invoking the protection in form of a moratorium granted under Section 96 of the IBC.

In this case, the Petitioners had availed financial facility from Shriram Nagari Sahakari Patsanstha Maryadit, Pune, for business expansion, and according to the Petitioners, their company, Siddheshwar Industries Pvt. Ltd. ("SIPL") is a private limited company primarily engaged in the business of auto components and has manufacturing operations at Pimpri and Chakan. While availing the financial facilities, the Petitioners, along with the co-borrowers, also executed mortgaged deeds, and certain properties were offered as collateral security by the Petitioners and the co-borrowers in different combinations.

2. In the first Petition, where Nanda Takwane is the sole Petitioner, she stood as a personal guarantor for the loan availed by Siddheshwar Industries Pvt. Ltd. (SIPL) from Seva Vikas Cooperative Bank Limited and, by executing personal guarantee(s) on 26/11/2014, and 14/03/2017, the personal property was mortgaged

for securing the repayment of the loan facility extended by the financier.

3. The common factor in both the Petitions is the initiation of corporate insolvency proceedings against Siddheshwar Industries Pvt. Ltd. (SIPL) by order dated 14/05/2018 passed by the National Company Law Tribunal, Mumbai Bench ("NCLT"), under the Insolvency and Bankruptcy Code, 2016. The Order dated 14/04/2019, admitted the Petition filed by one Gandhar Oil Refinery (India) Ltd., as the corporate debtor, Siddheshwar Industries Pvt. Ltd., defaulted in making payment of Rs. 15,91,266/- as on 30/09/2017, along with interest at the rate of 24 % as stipulated in the invoices for the supply of hydraulic oil, machine lubricant, mineral oil, and other products.

By the order passed by the NCLT on 14/05/2018, the Petition was admitted and a moratorium under Section 14 was imposed, thereby, prohibiting the institution of suits, or continuation of pending suits or proceedings against the corporate debtor, including execution of any judgment, decree, or order in any Court of law, or tribunal, arbitration panel, or any other authority, or any action to foreclose, recover, or enforce any security interest created by the corporate debtor in respect of its property, including action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The order of moratorium was directed to have effect from 14/05/2018 till completion of the corporate insolvency resolution process or until the NCLT approved the Resolution Plan under sub-section (1) of Section 31 of IBC or pass an order of liquidation of corporate debtor under Section 33.

Admittedly, subsequent to the CIRP order, the Board of Directors of the Corporate Debtor stood suspended.

4. The State Bank of India, another creditor preferred an application under Section 95 of the IBC in the form of Company Petition (IB) No. 958 of 2022 on 30/04/2022 against Smt. Nanda Takwane, the personal guarantor of Siddheshwar Industries Pvt. Ltd., and on 6/01/2023, by pressing into service the deed of guarantee executed by her, and the proceedings were initiated in her capacity as personal guarantor of the corporate debtor.

In the wake of the filing of the application under Section 95, it is the claim of the Petitioner that the interim moratorium, as contemplated under Section 96, commenced on the date of the application, in relation to all the debts, and during the interim moratorium period there was an embargo on: (i) any legal action or proceeding pending in respect of any debt; and (ii) on the creditors of the debtors in initiating any legal action or proceedings in respect of any debt.

It is in the wake of the aforesaid provision, in the form of a moratorium being imposed**,** we are informed that the proceedings have progressed substantially and a Resolution Professional has been appointed, who has even filed a report under the IBC before the NCLT.

5. As far as the second Writ Petition, in which Nanda Takwane, along with 4 others, availed the loan facility from Respondent No.2, Shriram Nagari Sahakari Pathsanstha Maryadit, as the Petitioners, in their individual capacities, along with the co-borrowers, has executed

mortgaged deeds by mortgaging various properties situated in different Gat numbers from Pargaon, Taluka Daund, District- Pune, and in the wake of the CIRP proceedings being initiated against SIPL by invoking the provisions of the IBC and the Petition having been admitted, relying upon the application preferred under Section 95 by the State Bank of India (the financial creditor) against the Petitioners it is urged that no action can be taken as they are also the guarantors of the corporate debtor.

6. Drawing advantage of the said application resulting into imposition of interim moratorium under Section 96, it is the claim of the Petitioners that, pursuant to the imposition of moratorium and appointment of the Resolution Professional, who has filed its report before the NCLT, the proceedings initiated under the Maharashtra Co-operative Societies Act, 1960, in the wake of the recovery certificate under Section 101, to be followed by the process being initiated by the District Magistrate in pursuance of Section 156 of the Act, cannot continue once the corporate debtor, SIPL, with which the Petitioners are associated, is undergoing CIRP under the Code, and particularly when the proceedings under Section 95 of the Code are initiated against the Petitioners in their individual capacities.

7. In support of the relief in the Petition, the counsel for the Petitioners by referring to the scheme of IBC and by relying upon the decision of the Apex Court in ***Dilip Jiwrajka vs. Union of India and ors***[1] would submit that the filing of an application under Section 95 automatically results into the imposition of interim moratorium under Section 96, from the date of the application, and it is urged that the

1 (2024) 5 SCC 435

filing of the application under Section 94 or 95 trigger the interim moratorium, which ceases to have effect on the date of the admission of the application (under section 100).

Relying upon Section 96 of IBC it is urged before us that the impact of the interim moratorium imposed is, an embargo being created upon continuation of any legal action or proceeding in respect of any 'debt', as it is deemed to have been stayed and there is a complete prohibition in the creditors or the debtors initiating any legal action or proceedings in respect thereof.

Reliance is also placed upon the decision of this Court in case of ***Mr. Ajeet Madhukar Mulay vs. Abhyudaya Co-operative Bank Limited & Ors (Commercial Arbitration Petition No. 843 of 2024)*** as well as another decision of this Court in case of ***Tata Capital Limited vs. Geeta Pasi and Ors***[2].

In support of the Petition based on the effect of the imposition of interim moratorium, it is also pointed out to us that the IBC (Amendment) Act 2025, presented through Bill No. 107 of 2025, has now proposed to insert a new sub-section (4) to Section 96 of the Code, providing that the provisions therein shall not apply where an application is initiated in insolvency resolution process in respect of a personal guarantor to a corporate debtor, filed by a creditor or the debtor itself and the counsel for the Petitioners would vehemently urge that the interpretation of Section 96 and the effect of interim moratorium must be construed in light of the amendment, which is sought to be introduced in Section 96 of the Code.

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8. As against the submission advanced on behalf of the Petitioners, the learned counsel representing the two lenders, who have secured recovery certificate under section 101 of the Maharashtra Co-operative Societies Act, 1960 and subsequently adopted the follow up action under Section 156 of the Act, would rely upon a significant decision of this Court in case of ***Rozina Firoz Hajiani & Ors vs. Union of India, through Ministry of Corporate Affairs*** (WP (L) No. 5157 of 2026) where, an attempt to seek resort to the provisions of IBC, 2016 to frustrate the claim of secured creditors and auction purchasers from proceeding, in accordance with law, was highly deprecated by the Division Bench, while pronouncing its verdict on 18/03/2026. By relying upon the said decision, it is submitted that in the facts of the case, it is held that the interim moratorium imposed under Section 96 of the IBC initiated against the personal guarantor would not apply to the Defendant No.1, the principal borrower in the suit against whom no proceedings have been initiated against IBC and the suit was directed to remain stayed only against Defendant Nos.2 to 4 as moratorium orders were imperative, as no proceedings were initiated against the principal borrower.

9. The principle laid down in the aforesaid decision is invoked by the learned counsel Mr. Sidheshwar Biradar appearing for Respondent No.3, as he would submit that by no stretch of imagination can the provisions of the Code and specifically in form of moratorium shall be invoked to defeat the otherwise lawful and legal remedy already availed by the financier/ lenders by taking resort to the provisions of the Maharashtra Cooperative Societies Act.

Reliance is also placed by him upon the decision of the Apex Court in case of ***State Bank of India vs. V. Ramakrishnan and Anr***[3], holding that moratorium under Section 14 is inapplicable to a personal guarantor of corporate debtor before and after its amendment in the year 2018. It is urged that with the clarificatory amendment being introduced in IBC in the year 2018, vide insertion of Section 3(b), making it evidently clear that moratorium under Section 14 shall not apply to a surety in a contract of guarantee for corporate debtor, it was however held that the amendment being clarificatory can operate retrospectively, by holding that the interpretation of the provision was always like this since its enactment and conclusively it was held that SARFAESI proceedings against personal guarantor of corporate debtor can continue under SARFAESI Act, even though a moratorium may be in force against a corporate debtor under Section 14 of the IBC.

Reliance is also placed upon the decision of the learned Single Judge in case of ***IL & FS Financial Services Limited vs. Serveall Constructions Pvt Ltd***[4], where the law laid down in Geeta Passi (supra), and Dilip Jiwrajka (supra) received consideration and it was held that the interim moratorium imposed under Section 96 of the IBC initiated for Defendant Nos.3 and 4, who are personal guarantors would not apply to the Defendant No.1, the principal borrower against whom no proceedings have been initiated under IBC.

10. In light of the rival contentions advanced, we would refer to the provisions of the IBC, as they are pressed into service for stalling the action initiated by the lenders-banks/patsanstha either against the

3 (2018) 17 SCC 394

4 2026 SCC Online Bom 2460

guarantors of the corporate debtor or the borrowers, who along with the co-borrowers had mortgaged their properties as a security for the loan facility availed.

The Insolvency and Bankruptcy Code, 2016, which has consolidated and amended the laws relating to insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of its assets to promote entrepreneurship, and balance the interest of all stakeholders, apply to the companies, partnerships and proprietary firm as well as the personal guarantors to corporate debtors as well as individual in relation to their insolvency, liquidation, or bankruptcy. The IBC has defined 'creditor' in Section 3 (10) as below:-

> *"(10) 'creditor' means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;"*

Debt is defined in Section 3 (11) as below:-

> *"(11) 'debt' means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;"*

11. Chapter II of the Code has set out the corporate insolvency resolution process, which permits the initiation of process by a financial creditor, an operational creditor or the corporate debtor itself, when it commits a default and the said chapter comprise of declaration of moratorium and public announcement, on admission of the application filed before the adjudicatory authority under Section 7 or Section 9 or Section 10 and Section 14 will cover a moratorium prohibiting all of the following:-

> *"(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration*

panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

12. Another provision for moratorium in form of 'interim moratorium' is found to be in Chapter III, when a debtor, who commits a default or the creditor, may apply either personally or through a resolution professional to the adjudicating authority, for initiating the insolvency resolution process by submitting an application.

This action result in imposition of moratorium under Section 96 which provides for the following:-

"96. Interim moratorium- (1) When an application is filed under section 94 or section 95-

(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and

(b) during the interim-moratorium period-

(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt."

13. Clause 2 and Clause 3 of Section 96 reads thus:-

'(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

14. By the amending Act of 2026, the following clause is inserted but the effective date of the same is not yet notified and the said clause is thus:-

> *'(4) the provisions of this section shall not apply where an application is filed for initiating an insolvency resolution process in respect of a personal guarantor to a corporate debtor.'*

15. The very said chapter further contain provision for admission or rejection of the application and Section 101 prescribe that when the application is admitted under Section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date on which the Adjudicating Authority passes an order on the repayment plan under Section 114, whichever is earlier. Sub-section (2) of Section 101 deserve the reproduction and we reproduce the same:-

> *'(2) During the moratorium period—*
>
> *(a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;*
>
> *(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and*
>
> *(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;'*

16. It is this interim moratorium under Section 96, which is pressed into service to halt or assert the continuation of proceedings initiated against the Petitioners by invoking the provisions of the Maharashtra Co-operative Societies Act, 1960, as there was a default in repayment of the facility advanced. In terms of the registered mortgaged deed, which was executed, by the borrowers/guarantors, it is the claim of the Bank that it is entitled to realise the amount due and payable to it from the proceeds that would be collected by sale of such property,

on its attachment. Pursuant to the recovery certificate being obtained, demand notices were issued in respect of the mortgaged property and it is urged that this process was initiated prior to the date of filing of Section 95 proceedings by the State Bank of India before the NCLT and the liability of the borrower/guarantor was already crystallized.

17. It is urged before us by Mr. Sidheshwar Biradar that there is an outstanding amount of Rs. 20,00,00,000 (Twenty Crores) recoverable from the Petitioners as well as the surety which is public money and the Respondent No.3 has already undergone liquidation process and it is necessary to recover the said amount by selling the mortgaged property.

The basic premise on which the relief in WP No. 13469 of 2025 is opposed is that the Petitioner Nanda Takwane as well as the Directors of SIPL always showed their willingness to pay outstanding amount under the OTS scheme and even after filing of the Writ Petition they approached the bank for accepting OTS proposal, but by filing the proceedings in form of the present Petition they are seeking stay of the recovery proceedings though the certificate issued under Section 101 of the Maharashtra Co-operative Societies Act is never subjected to challenge and therefore this attempt to project the moratorium amounts to abuse of process of law and the Petition deserves rejection with heavy cost. It is urged that the submission advanced by the Petitioner is an attempt to misuse the jurisdiction of this Court.

In WP No. 3057 of 2026, Mr. Veerdhaval Kakade appearing for Shriram Nagari Sahakari Pathsanstha and its Recovery Officer have some how similar stand as adopted by advanced by Mr. Biradar, as he would submit that the Respondent no.2 has initiated proceedings under Section 101 of the Cooperative Societies Act, and the recovery certificate was issued as early as on 19/06/2019 against the Petitioner and the Co-borrowers and this order was never challenged by them. Thereafter, Respondent No.2, initiated execution proceedings before the District Collector, Pune, by invoking Section 156 and the District Magistrate passed order on 31/05/2022, and thereafter on 1/06/2022 appointed the Tahsildar, Daund to execute the recovery certificate and take possession of the secured assets.

In regards to the defence of interim moratorium under Section 96 of IBC, it is submitted that the insolvency proceedings under Section 95 are initiated against the Petitioner by SBI, being the personal guarantor of the corporate debtor namely Siddheshwar Industries Pvt. Ltd., but the co-borrowers in the loan transactions are not party to the insolvency proceeding and it is categorically asserted that Shriram Nagari Sahakari Pathsanstha has no transactions with the corporate debtor namely SIPL and the loan transactions between the Petitioners and the Pathsanstha are independent transaction, which has no relationship with corporate debtor. In addition, it is also urged that blanket moratorium cannot be extended to the present execution proceedings and he would place reliance upon the decision of the Apex Court in case of ***Saranga Anilkumar Aggarwal vs. Bhavesh Dhirajlal Shet and ors***[5].

He would pose a question as to whether the benefit of moratorium can also be availed by the co-borrowers, who are not party to the insolvency proceedings and it is his specific submission

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that the liability of borrower and co-borrower is co-extensive/co-terminus in respect of the debt but the moratorium under Section 96 of IBC is not co-extensive and therefore the benefit of the interim moratorium cannot be extended to co-borrowers/co-judgment debtor in execution proceedings when no such proceedings are initiated under IBC against them.

By relying upon Section 128 of the Indian Contract Act, he would submit that a Surety's liability is co-extensive with the principal debtor, and it is not affected by the borrowers insolvency proceedings. He would place reliance upon the decision in case of ***IL & FS Financial Services Limited vs. Serveall Constructions Pvt Ltd*** (supra).

In such circumstances, it is sought to be urged that the Respondent No.2, has secured assets of co-borrowers, who are not party to the insolvency proceedings and therefore, there is no question of depletion of the assets of the debtors in the insolvency proceedings, if that is to be considered as the object in imposing interim moratorium.

18. In light of the scheme involved under Section 14 and Section 96 moratorium, it is worth to note that an interim moratorium imposed upon an application being filed under Section 94 by a debtor, who commits a default, to the adjudicating authority for initiation of insolvency resolution process or when the creditor has filed an application to the adjudicating authority for initiation of insolvency process, from the date of filing of such application, an interim moratorium shall commence in relation to 'all the debts' and this shall continue till the date of admission of such application.

During this interim moratorium, legal action or proceedings in respect of such debts shall deem to have been stayed and even the creditors of the debtor are forbidden from initiating any legal action or proceedings in respect of the debt.

While the validity of the said provision was tested in ***Dilip Jiwrajka*** (supra), the triggering of interim moratorium under Section 96, was considered, to be on the submission of application under Section 94 or Section 95. While clarifying the purpose of interim moratorium, being to restrain the initiation or continuation of legal action or proceedings against the debt, the Apex Court emphasized on the words 'in respect of any debt' and also contra-distinguished the said provision from the provision for moratorium contained in Section 14 in relation to CIRP in Part II and we deem it appropriate to reproduce the relevant observations :-

> *"57. Section 96, as its marginal note indicates, deals with an "interim-moratorium". In terms of Section 96, the interim moratorium takes effect on the date of the application. In other words, the very submission of an application under Section 94 or Section 95 triggers the interim moratorium which then ceases to have effect on the date of the admission of the application (under Section 100). The consequences which flow from an interim moratorium are specified in clause (b) of sub-section (1) of Section 96. The impact of the interim-moratorium under Section 96 is that a legal action or proceeding pending in respect of any debt is deemed to have been stayed and the creditors or the debtors shall not initiate any legal action or proceedings in respect of any debt. The crucial words which are used both in clause (b)(i) and clause (b)(ii) of sub-section (1) of Section 96 are "in respect of any debt". These words indicate that the interim-moratorium which is intended to operate by the legislature is primarily in respect of a debt as opposed to a debtor. Clause (b) of sub-section (1) indicates that the purpose of the interim-moratorium is to restrain the initiation or the continuation of legal action or proceedings against the debt.*
>
> *58. This must be contra-distinguished from the provisions for moratorium which are contained in Section 14 in relation to the CIRP under Part II. Section 14(1)(a) provides that on the insolvency commencement date, the institution of suits or continuation of pending suits or proceedings against the corporate debtor, including proceedings in execution shall stand prohibited by an order of the adjudicating authority. Clause (b) of sub-section (1) of Section 14 empowers the adjudicating authority to declare a moratorium restraining the transfer, encumbrance, alienation or disposal by the corporate debtor of any of its assets*

> *or any legal right or beneficial interest therein. Significantly, the moratorium under Section 14 operates on the order passed by an adjudicating authority. The purpose of the moratorium under Section 96 is protective. The object of the moratorium is to insulate the corporate debtor from the institution of legal actions or the continuation of legal actions or proceedings in respect of the debt."*

19. In light of the authoritative guidance to the aforesaid effect, when the interim moratorium contemplated under Section 96 is applicable in relation to all 'debts' and the term 'debt' being defined under the IBC to cover a liability or obligation in respect of a claim, which is due from 'any person' and that it shall include a financial debt and operational debt, the interim moratorium which shall operate qua 'all the debts' , is a provision intended to freeze legal proceedings. As debt is a liability or obligation, apart from the borrower, even a person who is a guarantor/surety is also covered because the protection is not available against a particular debtor or guarantor, but it is a protective mechanism intended to freeze the legal action or proceedings pending in respect of the 'debt' and the creditor of the debtor is prohibited from initiating any legal action or proceedings in respect of the debt. The imposition of moratorium is in relation to debt and not the debtor and this protection is available to the debtor as well as its guarantor and when a moratorium is qua the debt, it is equally applicable to the Guarantor as well as the Debtor/ Borrower. The definition of the term 'debt' also offers a clarity, as it is defined to be a liability or obligation in respect of a claim which is due from 'any person', which therefore diminishes the line between the persons from whom the debt is due and it may be a borrower or a guarantor. As per Section 126 of the Contract Act, 1872, 'a contract of guarantee' is a contract to perform the promise or

discharge the liability of a third person in case of his default and the person giving the guarantee, referred to as 'surety', gives the guarantee on default of the 'principal debtor'.

20. In ***Tata Capital Limited Vs. Geeta Passi & Ors.*** (supra), the learned Single Judge of this Court was confronted with an identical situation, when it was sought to be argued that considering a debt, which remains unpaid, the creditor could move the Court against the principal borrower and the surety/guarantor for recovery of the debt as the liability of surety/guarantor is co-extensive with that of the principal borrower and creditor may choose to proceed against the guarantor alone for recovery of debt, without suing principal borrower, in the backdrop of the scope of 'debt' in such a scenario and the following observation of the learned Single Judge is relevant to note :-

> *"9. A "debt", is defined in Section 3(11) of the Insolvency and Bankruptcy Code to mean a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. It is material to note that Section 3(11) of the Insolvency and Bankruptcy Code when it defines "debt", states it to be a liability or obligation in respect of a claim which is due from "any person". The very use of the expression "any person",would mean that no distinction can be drawn on the basis of, from whom the debt is due, a principal borrower or a guarantor. Section 96 of the Insolvency and Bankruptcy Code, also uses the expression "all the debts", in clause (a) of sub-section (1) and "any debt", in sub-clauses (i) and (ii) of clause (b) of sub-section (1). When Section 96 of the Insolvency and Bankruptcy Code, speaks of a moratorium in respect of "any debt", the same would mean the entire debt, irrespective from whom it is due."*

Clarifying that the protection mandate of Section 96 of IBC is in respect of 'debt', on facts it is held that when the NCLT granted a moratorium under Section 96 of IBC in favour of Mr.Kapoor, the principal borrower being the proprietor of SMC and Mrs Pavan Kappor, being the guarantor, it was held that it will have to be construed as a moratorium in respect of the entire 'debt' and the claim cannot make distinction between a 'debt' vis-a-vis the principal debtor or other parties thereto as guarantors or even considering their co-extensive liability and it is categorically held thus :-

> *"The 'debt' for the purpose of the moratorium, cannot be severed into the 'debt' of the principal borrower or for that matter of one of the guarantors on the one hand, and the debt of the other guarantors, in this case the legal heirs of original Respondent 4, Mr B.L. Passi."*

Thus, it was held that the 'debt' is 'debt' for all the purpose and it is a 'debt' in its entirety and it is not permissible to distinguish between the debt of a principal borrower and that of the guarantor.

21. The aforesaid pronouncement from the learned Single Judge was followed by another Single Judge in ***Mr.Ajeet Madhukar Mulay*** *(supra)*, where a challenge was raised to the Arbitration Award alongwith the orders passed in the applications filed by the petitioners, who stood as guarantors for the financial assistance availed by one M/s Nirmangold Alloys Private Limited and M/s Nirmangold Plasttech Private Limited.

When there was default in repayment, the credit facility accounts of the company were classified as NPA and notices were issued to the principal borrower and the guarantors, which were not complied with, giving rise to a dispute filed under Section 84 of Multi-State Co-operative Societies Act, 2002. Similarly, the arbitration proceedings were invoked by the disputant bank, seeking recovery of the outstanding amount and during the pendency of the arbitration proceedings, applications were filed under Section 94 of the IBC and the Arbitrator held that since the moratorium had commenced, the arbitration cannot proceed.

The said order, being a subject matter of the Arbitration Petition, it was noted that the principal borrowers, M/s Nirmangold

Plasttech Private Limited and M/s Nirmangold Alloys Private Limited were admitted to insolvency and undergoing corporate insolvency process under the IBC and the two of the guarantors claimed benefit of the interim moratorium under Section 96 of IBC premised on filing of applications under Section 94 of IBC for personal insolvency. It was urged that as per the provisions of IBC, the filing of application under Section 94 triggers an interim moratorium in relation to 'all the debts' from the date of filing of the application and during the interim moratorium, any legal action or proceedings in respect of any debt shall be deemed to have been stayed. This submission was accepted by the learned Arbitrator, who stayed the arbitration proceedings qua the two guarantors, but continued the proceedings against the other guarantors. By placing reliance upon the decision in the case of ***Tata Capital Limited Vs. Geeta Passi & Ors.*** (supra) and in the light of the observations in ***Dilip Jiwrajka*** (supra), the learned Single Judge held thus :-

> *"67(a) The continuation of the arbitration proceedings against the Petitioners despite the stay of "debt" under Section 96 of IB Code on the applications filed by the other guarantors disregards the binding judicial pronouncement of Hon'ble Apex Court and this Court and is violative of fundamental policy of Indian law under Section 34(2)(b)(ii) of Arbitration Act."*

22. The applicability of triggering of moratorium, as contemplated in Section 96, received a further clarification by Delhi High Court in ***Axis Trustee Services Ltd. Vs. Brij Bhushan Singal & Anr.***[6], when the following clarification was recorded :-

> *"34. Before the insolvency applications were filed against defendant No.1, counsel for the defendants had also contended that the interim moratorium in respect of one of the co-guarantors would also apply to the other co-guarantor for the same debt as the liability of both the co-guarantors arise from the same debt. Reliance is placed on the words "any debt" occurring in section 96(1)(b) of the IBC. Though I need not delve into this submission in view of the fact that insolvency proceedings have subsequently been filed against defendant*

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No.1, however, since I have heard counsels for the parties extensively on this issue, I propose to address the same.

35. In my view, the language of section 96(1) of the IBC cannot be stretched so as to include all co-guarantors within the ambit of the interim moratorium. The reference to "all the debts" in section 96(1)(a) has to be in respect of all debts of a particular debtor. This is clear from the language used in section 96(1)(b)(ii) to the effect that "the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt". Therefore, the effect of the interim moratorium is only in respect of the debts of a particular debtor. By no stretch of imagination can it be said to include other independent guarantors in respect of the same debt of a corporate debtor. Merely because an interim moratorium under section 96 is operable in respect of one of the co-guarantors, the same would not apply to the other go-guarantor(s)."

23. The counsel for the Respondents would place heavy reliance upon the decision of the learned Single Judge in ***Rozina Firoz Hajiani*** (supra) and we have carefully perused the finding rendered in the said judgment, which necessarily has to be appreciated against the facts of the case and the court taking note of a disturbing trend, in regards to the manner in which the chronic defaulters were resorting to the provisions of IBC, 2016 to frustrate secured creditors and auction purchasers from proceeding, in accordance with law, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, **"the Securitisation Act"**).

Specifically noting that the borrowers/guarantors act as fence sitters and do not take any steps when the secured creditors proceed under section 13(2) and take any further consequential steps, till the culmination of the process and the auction purchasers coming into picture. Noting that at the stage, when the auction sale is conducted and the auction purchaser comes into picture and in some cases, even when the sale certificate is issued and the physical possession is about to be handed over, the original borrowers/guarantors initiate collusive proceedings under Section 94 or 95 of IBC, triggering a moratorium under Section 96, by approaching the NCLT. As a result, the whole process comes to a standstill and such borrowers/guarantors, who are defaulters, wear a cloak of immunity under the garb of moratorium triggered under Section 96 of IBC. In such a scenario, the secured creditor and/or the auction purchaser are left with no other option, than to approach the NCLT and at times the proceedings are carried to NCLAT and then to the Supreme Court, but in this full process, the interest of the auction purchaser is completely frustrated, despite having parted with consideration in terms of the bid amount.

It is in this premise, when the facts before the Court revealed that the bank took steps for realisation of its unpaid dues and time to time conducted the auction and when it issued the tenth auction notice, scheduling the date for auction, the borrowers and guarantors approached the DRT, by filing securitisation application, which was after more than seven years when the notice was served on the borrowers and guarantors under Section 13(2) of the Securitisation Act. In the auction conducted, the petitioners were found to be the successful bidders and deposited the entire amount and sale certificate was issued in their favour, which was also registered and they were put in physical possession.

At this crucial stage, the personal guarantor filed an application under Section 94 of IBC and claimed the umbrage of the moratorium under Section 96 and this fact being brought to the notice of DRT, the Tribunal refused to proceed in the wake, by observing that there was a moratorium imposed.

24. It is in these grave circumstances, the Court observed that Debt Recovery Tribunal was not justified in stalling the proceedings and it should have taken note of sequence of events, including one important fact that the NCLT, Mumbai excluded the secured assets from moratorium, but ignoring this, the DRT passed one line order, restraining the bank from taking any further steps till disposal of the interim application pending in the securitisation application. Noting that the whole exercise was purported to be a manifest misuse of provisions of law, and the Court in exercise of its writ jurisdiction pass an order to set right the obvious wrong, it was noted that the parties would continue to misuse the provisions of law to browbeat the subordinate tribunals like DRT and, therefore, it was found to be a case, where the High Court shall exercise its writ jurisdiction and the impugned order passed by the DRT was set aside, by directing that the bank need not await disposal of the interim application for taking further steps in pursuance of the auction sale and registration of sale certificate in favour of the petitioners. The Court Commissioner was directed to proceed in accordance with law in terms of the order passed by the competent authority under Section 14 of the Securitisation Act and take consequential steps.

The law laid down in ***Rozina Firoz Hajiani*** (supra) will, therefore, have to be appreciated in the backdrop of the malicious attempt to use the proceedings to defeat the due course of law. Reliance placed upon the aforesaid judgment by the Respondents, therefore, do not lay down as a proposition of law that in every case, where an application is filed under Section 94 by the debtor or under Section 95 by the creditor to initiate insolvency resolution process, it is an attempt to dislodge the claim of the creditor.

25. The decision in the case of ***State Bank of India Vs. V. Ramakrishnan & Anr.*** (supra) upon which the reliance is placed by the Respondents, also revolve around Section 14 of the IBC, where it is held that the moratorium under Section 14 is inapplicable to a personal guarantor of corporate debtor and with clarity it is ruled that not only was Section 14 inapplicable to personal guarantor of corporate debtor prior to its amendment in 2018, but this position of law is confirmed by the clarificatory amendment through insertion of Section 3(b), which make it clear that moratorium under Section 14 shall not apply to a surety in a contract of guarantee for corporate debtor. In fact, in the said decision, the Apex Court noted the distinction between moratorium under Section 96 alongwith Section 101 and the moratorium imposed under Section 14 and observed that Section 14 cannot possibly apply to a personal guarantor and when an application is filed under Part III, an interim moratorium or a moratorium is applicable in respect of 'any debt'. Drawing A distinction, it is noted that it is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution process may be initiated under Part III and the protection of the moratorium under these sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed.

The difference in language of Sections 14 and 101 was set out for a reason, which was reflected in the following words :-

"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 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."

26. The decision in case of ***BRS Ventures Investments Limited Vs. SREI Infrastructure Finance Limited & Anr.***[7] does not take the case of the Respondents any further, as it laid down a proposition of law that a resolution plan of a corporate debtor approved by the adjudicating authority binds the corporate debtor, its employees, members, creditors, guarantors and other stake holders and, therefore, where a company furnishes a corporate guarantee for securing a loan taken by another company and if the CIRP of the corporate guarantor ends in a resolution plan, it will bind the creditor of the corporate debtor and the corporate guarantor's liability may end in such a case by operation of law. But, such a resolution plan of the corporate guarantor will not affect the liability of the principal borrower to repay the loan amount to the creditor after deducting the amount recovered from the corporate guarantor or the amount paid by the resolution applicant on behalf of the corporate guarantor as per the resolution plan.

27. The situation before us is, however, completely distinct than the one which is existed in ***BRS Ventures Investments Limited*** (supra). The Petitioners before us are the guarantors of the corporate debtor, Siddheshwar Industries Private Limited (**"SIPL"**), which is undergoing CIRP. Upon the State Bank of India filing separate applications under Section 95 against the personal guarantors of the

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corporate debtor, SIPL, the interim moratorium has come into operation.

Writ Petition No.3057 of 2026 is accompanied with the case status of all the applications filed by the State Bank of India against the four Petitioners, the guarantors, being impleaded as Respondents and this include Smt.Nanda Takawane, Vikas Takawane, Raviraj Takawane and Yuvraj Takawane, all being the personal guarantors to the corporate debtor, SIPL. We are informed that the said applications are pending before the NCLT and since it is in relation to the 'debt', which is due and payable by the corporate debtor, SIPL, and the Petitioners are the guarantors to the said transaction, upon the application being filed by the creditor (State Bank of India), on filing of the application, the interim moratorium is triggered in relation to all the debts and by virtue of clause (b) of sub-section (1) of Section 96 of IBC, any legal action or proceedings pending in respect of the debt is deemed to be stayed and the creditors or the debtors are not allowed to initiate any legal action or proceedings in respect of such debt.

In light of the aforesaid position clearly surfacing on record, we are not persuaded to accept the submission that the proceedings initiated under Section 101 of the Maharashtra Co-operative Societies Act, 1960, resulting into a recovery certificate being issued against the Petitioners, shall be allowed to proceed. However, when we have perused the list of the borrowers/co-borrowers furnished by Mr.Kakade, we find that the borrowers of Seva Vikas Co-operative Bank Limited are the four Petitioners, but the co-borrowers are distinct individuals. In the said transaction, once again the guarantors are interchangeably the four Petitioners in Writ Petition No.3057 of 2026, but the mortgaged property is the property of the co-borrowers. We must clarify that the moratorium imposed under Section 96 do apply to the debt which is due and payable to the corporate creditor by the corporate debtor, but if the mortgaged properties belong to the co-borrowers, who are not the guarantors of the corporate debtor i.e. SIPL, the moratorium will not impact these properties, if the properties exclusively belong to the co-borrowers. However, if the property is joint in the name of the co-borrowers and the Petitioners, who are the individual guarantors of the corporate debtor and though they happened to be the borrowers of Seva Vikas Co-operative Bank, such transactions shall not proceed.

28. The conclusion drawn by us to the aforesaid effect restrict the moratorium only to the principal borrower and the guarantor of the corporate debtor and this provision in fact intended to cover the debt of a personal guarantor, if he was a personal guarantor to a corporate debtor, who is admitted to IBC proceedings and to do away with the said mischief, the Section 96 of IBC is amended to include a provision to the effect that the moratorium shall not apply, where an application is filed for initiating an insolvency resolution process in respect of a personal guarantor to a corporate debtor, but since this provision has not yet come into force, we must issue a declaration sought by the Petitioners and as long as the moratorium continue to be in force, the Respondents, the officials from the Co-Operative Department and the Recovery Officer of Shree Ram Nagari Sahakari Patsanstha and Seva Vikas Bank Limited shall stay their hands of and shall not take steps for recovery of the amount due and payable,

though the recovery certificate is secured by them. But we clarify that this prevention is applicable only to the Petitioners and their properties only.

The Writ Petitions are made absolute in the aforesaid terms.

In light of the aforesaid pronouncement, the Interim Application seeking stay of the further notices stands disposed of.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

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