CHAITANYA ASHOK JADHAV Digitally signed by CHAITANYA ASHOK JADHAV Date: 2026.08.25 16:44:43 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 456 OF 2017

Nav Munjal Co-operative Housing Society Ltd. ...Petitioner

Versus

Saranga Anil Agarwal ...Respondent

Mr. Naushad Engineer, *Senior Advocate a/w Mr. Viraj Parikh, Mr. Dharmesh S. Jain, Ms. Arpita Tiwari i/b Mr. Anit T. Agarwal, for the Petitioner.*

Mr. Shyam Kapadia *a/w Mr. Shadab Jan, Mr. Ritesh Hegde, Mr. Aniruth Purusothaman i/b Keerti K. Purusothaman, for the Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: AUGUST 25, 2026

JUDGEMENT :

Context and Factual Background:

1. Nav Munjal Co-operative Housing Society Ltd. ("***Society***") has filed this Petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***") to challenge an arbitral award dated May 25, 2017 ("***Impugned Award***"), by which Ms. Saranga Anil Agarwal, the proprietor of M/s Rockline

Construction Company ("***Developer***"), has been granted specific relief along with compensation.

2. The parties had executed a Development Agreement dated July 24, 2006 ("***DA***") and a Supplementary Development Agreement dated July 12, 2012 ("***2012 Supplementary DA***"). In this judgement, the DA and the 2012 Supplementary DA are collectively referred to as the ("***Development Agreement***"). The Development Agreement entailed the redevelopment of the Society's property, but the project had been stalled, with the Developer blaming a dissenting group of the Society's members for obstructing it. The Society eventually terminated the Development Agreement on July 21, 2014.

3. The Impugned Award declares the Development Agreement to be valid and subsisting and grants specific performance to the Developer along with compensation in the sum of Rs. 10 crores, with an award of Rs. 50 lakhs as costs. The Society's counterclaim was rejected in its entirety.

4. The challenge under Section 34 of the Act is mounted on the ground that the Impugned Award declaring the Development Agreement as valid and subsisting, and the award of compensation of Rs. 10 crores are ex facie unreasoned; and that vital terms of contract and evidence were ignored. The Petition was admitted way back in 2018 and has remained pending till date.

Core Issue:

5. It is common ground that personal insolvency proceedings have been commenced against the Developer under the Insolvency and Bankruptcy Code, 2016 ("***IBC***") in her capacity as a personal guarantor of a company that has been admitted to the corporate insolvency resolution process. This has triggered the interim moratorium under Section 96 of the IBC.

6. The Developer claims that the interim moratorium would bar the continuance of the Section 34 Petition, which is essentially a legal proceeding against her.

Analysis and Findings:

7. By consent of the Parties, this core issue was taken up for determination at the threshold. I have heard at length Mr. Naushad Engineer, Learned Senior Advocate on behalf of the Society and Mr. Shadab Jan, Learned Advocate on behalf of the Developer and with their assistance examined the legal provisions of the IBC and the case law relied upon.

8. Section 96 of the IBC, which triggers the interim moratorium reads thus:

> *"**Section 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__.

*(2) & (3) *****"*

__[Emphasis Supplied]__

9. A plain reading of the foregoing would show that upon the filing of an application relating to personal insolvency, the moratorium envisaged under Section 96 would be triggered. The moratorium effects a deemed injunction on any legal action or proceeding that is pending. However, such legal action or proceeding must be "*in respect of any debt*". Likewise, the creditors are statutorily barred from initiating any legal action or proceeding *in respect of any debt*.

10. The term "debt" is defined in Section 3(11) of the IBC, which reads thus:

"(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__;"

__[Emphasis Supplied]__

11. Therefore, a liability or an obligation that is due from "any person" is a "debt". Such debt has to be due "*in respect of a claim*". The term "claim" too is defined in Section 3(6) of the IBC, which reads thus:

> *"(6) "**claim**" means –*
>
> *(a) **a right to payment**, **whether or not such right is reduced to judgment**, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;*
>
> *(b) **right to remedy for breach of contract** under any law for the time being in force, **if such breach gives rise to a right to payment, whether or not such right is reduced to judgment**, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;"*
>
> ***[Emphasis Supplied]***

12. A claim can be a right to payment or a right to remedy for breach of contract, if such breach gives rise to a right to payment. Therefore, at the heart of a "claim" is the "right to payment". Such right to payment may or may not be reduced to writing in a judgement. It may even be a disputed right and may or may not be secured. Even a right to remedy for breach of contract, if such breach leads to a right to payment would be a claim.

13. The Society counters the Developer's contention on three primary counts. *First*, the Impugned Award grants the Developer specific relief. The challenge to such grant of specific relief is not litigation in respect of a debt. *Second*, the amount awarded in the Impugned Award is not a "debt" owed to

the Developer and not by the Developer, which makes the Developer a creditor of the Society. Therefore, the Section 34 proceedings would not be litigation "in respect of a debt". *Third*, while the rejection of the Society's counter-claim is also under challenge, it would constitute an "excluded debt" under the IBC. Each of these contentions is discussed below.

Specific Relief versus Debt:

14. The stage at which the proceedings currently are placed, and the context of the Section 34 jurisdiction would play a role in the analysis and therefore a word on that would be in order. The jurisdiction under Section 34 of the Act is not one permitting an appellate review. The jurisdiction of the Section 34 Court is not co-extensive with the jurisdiction of the arbitral tribunal. The Section 34 Court has a binary role – it can either refuse to interfere with the Arbitral Award or set it aside. Indeed, an Arbitral Award can be upheld with only an excisable and offensive part being severed, if such severance would save the rest of the Arbitral Award and retain its validity. Therefore, in the captioned Petition, what falls for consideration is whether the Impugned Award lends itself to interference.

15. Against that backdrop, if one examines the Impugned Award, what falls for consideration is whether it is amenable to being set aside. In the event the Impugned Award is set aside, it would not impose any liability on the

Developer. It would lead to a contractual right enforced in the form of specific performance of the Development Agreement being denied. The Section 34 Court, unlike an appellate court, cannot substitute the grant of specific relief with the grant of damages instead of specific performance. All it can do is decide whether the Impugned Award is capable of being left alone without interference, and whether the narrow confines of interference permitted under Section 34 permit setting aside the Impugned Award.

16. Therefore, one has to examine if the challenge to the grant of specific relief falls within the ambit of what is deemed to be stayed under Section 96 of the IBC. Each of the limbs of Section 96 warrants consideration. Indeed, the interim moratorium has commenced with the filing of the application under Section 95, but whether that moratorium comes in the way of the Section 34 Petition has to be examined. Such moratorium commences in relation to "debts". What is deemed to get automatically stayed is pending legal action or proceeding *in respect of any debt*. Creditors of the debtor are also prohibited from initiating new legal actions *in respect of any debt*.

17. To my mind, a logical and commonsensical reading of sub-clauses (i) and (ii) of Section 96(1)(b) is that the debts in respect of which the statutory deemed stay would apply are the debts of the person who is subjected to the insolvency proceedings. The insolvent's debts are not meant to be disturbed

when the insolvency proceedings are conducted, which necessitates keeping the debt structure in a frozen state, for which the moratorium applies. In the facts of the present case, it is primarily the right conferred on the Developer to perform the Development Agreement that is up for challenge in the legal proceedings, i.e. the Section 34 Petition. The Developer is not the debtor of the Society but has a contractual right that is held as being enforceable and amenable to specific performance. If the Section 34 Petition were to be allowed, the Society would not become a creditor of the Developer, but the Developer would cease to be a creditor of the Society. This would not disturb the debts of the insolvent Developer at all.

18. The term "debt" itself, is defined in Section 3(11) of the IBC as a *liability* or *obligation* that is due. Such a liability or obligation must relate to a *claim*, which is a term defined in Section 3(6) of the IBC as primarily a *right to payment*. The right to a remedy for breach of contract too would be a claim but such breach must give rise to a *right to payment*. Even if such right to payment is reduced to writing in a judgement, it would still just be a claim and the adjudicated liability to make such payment would constitute a debt. Applying this to the facts of the present case, the Impugned Award reduces to writing an adjudicated specific relief. It does not create a right to payment in favour of the Developer; it creates a right to specifically perform a contract. If the Section 34 jurisdiction were an appellate jurisdiction that was co-extensive

with the jurisdiction of the author of the Impugned Award, it could be argued that the specific relief could potentially be converted into damages or worse, the counter-claim could be allowed and an obligation on the Developer to pay the Society could come about.

Compensation and Costs:

19. The element of compensation and costs awarded by the Learned Arbitral Tribunal is incidental, supplemental and dependent on the specific relief granted. If the specific relief is found to be unworthy of being granted by the Section 34 Court, the compensation and costs would also get set aside. If there is no interference with the specific relief, there would be no interference with the compensation and costs. Either way, the outcome in the Section 34 proceedings would not lead to a liability being inflicted on the insolvent protectee under Section 96. Therefore, I find it impossible to hold that the hearing of the Section 34 Petition would be conduct of a legal proceeding in respect of a debt. On the contrary, it could be a proceeding in respect of an asset of the insolvent – the right to perform the Development Agreement, and not a proceeding that can disturb any existing obligation or liability of the insolvent Developer.

<u>Counter-Claim and "Excluded Debt":</u>

20. At the risk of repetition, even the findings in the Impugned Award in relation to the counter-claim, if set aside, can only lead to the parties being brought back to square one – to the subsisting arbitration agreement. The Section 34 Court cannot allow the counter-claim.

21. However, even if the findings on the counter-claim in the Impugned Award are found unworthy of acceptance, all that the Section 34 Court can do is set aside the Impugned Award as formulated; and the arbitration agreement being subsisting, would lead to another round of arbitration for a fresh adjudication. On this facet of the matter, the Society would contend that the counter-claim falls under the ambit of "excluded debt" as defined under Section 79(15) of the IBC, thereby falling outside the ambit of the moratorium under Section 96. This necessitates examining this definition, which reads thus:

> *"(15) "**<u>excluded debt</u>**" means –*
>
> *(a) liability to pay fine imposed by a court or tribunal;*
>
> *(b) **<u>liability to pay damages for negligence</u>**, nuisance or **<u>breach of a</u>** statutory, **<u>contractual</u>** or other legal **<u>obligation</u>**;*
>
> *(c) liability to pay maintenance to any person under any law for the time being in force;*
>
> *(d) liability in relation to a student loan; and*

(e) any other debt as may be prescribed;"

[Emphasis Supplied]

22. The IBC has taken care to treat the liability to pay damages, among others, for negligence and for breach of contractual obligations as an "excluded debt". There is some evident logic in the manner of the definition, inasmuch as the IBC deals with crystallised obligation of the insolvent to pay the person who enjoys the corresponding right to such payment. The Society would contend that this definition of "excluded debt" would point to an extrapolation that anything falling within the meaning of "debt", i.e. a liability corresponding to a right to payment (a claim), would stand excluded from the meaning of "debt" if it meets the definition of "excluded debt".

23. However, this proposition is not borne out directly from the statute. If one carefully examines every provision of the IBC where the defined term "excluded debt" is used, it would suggest that where there is a conscious legislative design to bring "excluded debt" into the matrix of the underlying policy, the legislature has consciously used that term. It would follow that where the legislature did not desire to use the term to exclude anything, it did not use the term despite having defined it, since it was conscious to adopt the term only where it was felt necessary.

24. I have carefully examined the provisions that use the term "excluded debt". These are Section 79(19), which defines "qualifying debt" from which term, "excluded debts" are positively excluded. The term "qualifying debt" is used in Section 80 of the IBC which enables a person who is unable to pay his debts to make an application for a "fresh start" in respect of his qualifying debts. Such fresh start would not reset the "excluded debt". This term is solely used in Chapter II of Part III of the IBC and has nothing to do with Chapter III, which houses the provisions starting with Section 94 of the IBC until Section 120, which deals with resolution of an individual insolvent. Therefore, this usage of "excluded debt" would not have any relevance for making any deductive inference for adjudication of the issue at hand.

25. The only provision in which the term "excluded debt" is used in Chapter III of the IBC, in which Section 96 too resides, is Section 94, which enables an insolvent debtor who commits a default to apply by himself for a resolution process. In contrast, Section 95 is the provision that enables a creditor to trigger an insolvency resolution process. In the matter at hand, it is Section 95 that has led to Section 96 and not an application under Section 94 by the Developer herself. In any case, in Section 94(3), it is provided that an application filed by the individual insolvent for resolution of debts can only be in respect of debts that are not excluded debts. Such an exclusion is not found in Section 95 of the IBC, and therefore, arguably, when a creditor initiates the

resolution process, the "excluded debts" are not positively and consciously excluded.

26. Finally, under Section 139 of the IBC, which is the provision that deals with discharge of a bankrupt from all bankruptcy debts, debts that are "excluded debt" would not be covered by the discharge. This provision sits in Chapter IV of Part III. Arguably, if the process of a fresh start under Chapter II of Part III of the IBC does not permit a fresh start with "excluded debt", and the final discharge under the bankruptcy provisions of Chapter IV does not cover "excluded debt", it strongly points to the fact that insolvency resolution process under Chapter III would not impact "excluded debt" at all. In that light, it is apparent that the positive and conscious usage in Section 94(3) is meant to indicate that an insolvent cannot make an application on his own to excuse himself from an excluded debt, while the absence of usage of the term in Section 95 is based on the premise that it was not even considered necessary to plug a potential abuse, since under Section 95, it is a third-party creditor who would move the application.

27. Therefore, while the moratorium under Section 96 is triggered by either Section 94 or Section 95, the explicit difference in approach in the two provisions that lead up to Section 96 may not amount to much relevance by considering the scheme of how "excluded debt" is kept out of every facet of

resolution – from a fresh start to final discharge, which indicates that it would be out of the intermediate attempt at insolvency too.

28. On this facet of the matter, to my mind, it is the nature of the jurisdiction under Section 34 of the Act that would render this element irrelevant. As stated earlier, if the Section 34 jurisdiction were an appellate jurisdiction that was co-extensive with the jurisdiction of the author of the Impugned Award, it could be argued that the counter-claim could be allowed and an obligation on the Developer to pay it could come about. However, even if the findings in the Impugned Award in relation to the counter-claim are set aside, the parties would simply be brought back to square one – to the subsisting arbitration agreement. The Section 34 Court cannot allow the counter-claim. All that the Section 34 Court can do is set aside the Impugned Award as formulated, which would not lead to a liability or obligation corresponding to a right to payment by the Developer. Therefore, on the counter-claim too, in my opinion, there is no scope to hold that the conduct of the Section 34 proceedings would conflict with Section 96 of the IBC.

Interest in Land is an Asset:

29. Indeed, the Impugned Award holds that the Development Agreement has created an interest in the land of the Society, which makes it an asset and not a liability. The Impugned Award is not a payment obligation given the

colour of specific performance. The logic or the alleged lack of logic in such decision is what falls for consideration in the Section 34 Petition. To my mind, the moratorium under Section 96 of the IBC would not result in a deemed statutory stay on the Section 34 Petition. The stay of the Section 34 Petition would not at all be protective of the Developer, since it would only delay the crystallisation of the Developer's declared entitlement to the asset in the form of interest in the land.

30. The worst-case outcome for the Developer and the best case outcome for the Society would be for this declared right as being incorrectly declared, which would lead to arbitration afresh – even in that event, there is no moratorium on the arbitration, which is a claim by the Developer against the Society. If the arbitration were to start afresh, the ability of the Society to establish a counter-claim may not be feasible unless the general theory of "excluded debt" being out of the scope of the debts being resolved, is accepted. That is a matter for consideration in such an arbitration should that eventuality come about after the end of the Section 34 proceedings, and it cannot inform the decision at the threshold on the core issue being dealt with – whether the Section 34 Petition can at all proceed further.

Case Law Analysis:

31. Against this backdrop, a decision of the Supreme Court in relation to the very same Developer in ***Saranga v Bhavesh***[1] would be instructive. The Supreme Court was dealing with a case involving a challenge to compensation awarded under consumer protection law against the Developer. Therefore, while this is strictly not applicable to the factual matrix at hand, where the Developer is actually not a debtor at all, the following extracts are noteworthy:

> *"**33.** Further, **a distinction must be drawn between the moratorium applicable to a corporate debtor under Section 14 IBC and the interim moratorium applicable to individuals and personal guarantors under Section 96 IBC**. The **former is much broader in scope and stays all proceedings against the corporate debtor**, including execution and enforcement actions. However, **Section 96 IBC is more limited in its scope, staying only "legal actions or proceedings in respect of any debt".** Unlike corporate insolvency proceedings, where the goal is a comprehensive resolution of the company's liabilities, **individual insolvency proceedings are designed primarily for restructuring personal debts and providing relief to the debtor. The legislative intent behind limiting the scope of the interim moratorium under Section 96 IBC must be respected, and a blanket stay on all regulatory penalties would result in defeating the objectives of consumer protection laws.***
>
> ***34.** **The moratorium under Section 96 IBC is intended to provide temporary relief to debtors by preventing certain proceedings against them during the resolution process. However, this protection is not absolute and does not extend to all categories of debts.** The legislative intent behind the moratorium is to ensure that the debtor's assets are preserved for an efficient resolution process and to prevent*

1 *Saranga Anilkumar Aggarwal v. Bhavesh Dhirajlal Sheth* – ***2025 (4) SCC 629***

*creditors from taking unilateral actions that may frustrate the objective of insolvency proceedings. **However, the statutory scheme of the IBC makes it clear that the protection under the moratorium does not cover all forms of liabilities, particularly those classified as "excluded debts" under Section 79(15) IBC.***

*35. **The respondents have rightly contended that Section 94(3) IBC explicitly limits the scope of the moratorium by carving out exceptions for certain categories of debts. Section 79(15) IBC defines "excluded debts" to include liabilities arising from fines imposed by courts or tribunals, damages for negligence or breach of obligation, maintenance liabilities, student loans, and other prescribed debts. This classification is based on the nature of such obligations, which are either statutory, penal, or personal in nature, and therefore, they do not form part of the insolvency estate that can be discharged under the resolution process.***

*36. **In the present case, the damages awarded by Ncdrc arise from a consumer dispute, where the appellant has been held liable for deficiency in service. Such damages are not in the nature of ordinary contractual debts but rather serve to compensate the consumers for loss suffered and to deter unethical business practices.** Courts and tribunals, including Ncdrc, exercise their statutory jurisdiction to award such damages, and **these are distinct from purely financial debts that may be subject to restructuring under the IBC. Since such damages are covered under "excluded debts" as per Section 79(15) IBC, they do not get the benefit of the moratorium under Section 96 IBC, and their enforcement remains unaffected by the initiation of insolvency proceedings.**"*

[Emphasis Supplied]

32. As already stated, the aforesaid observations were made in relation to the very same person, the Developer in this case. The trigger for the interim moratorium under Section 96 was the same – State Bank of India initiating it

in relation to a guarantee issued for the debts of a company i.e. due to an application made under Section 95 of the IBC. Yet, the Supreme Court did not make a distinction between the use of "excluded debt" in Section 94 and its absence of use in Section 95 and placed "excluded debt" in the domain of a complete exclusion from the resolution process under Chapter III of Part III of the IBC. Therefore, even adjusting for the difference in the two cases, namely, the Developer being an obligor with a debt payable in the form of compensation awarded by the consumer court, while in this case the Developer is declared to be the owner of an asset in the form of interest in land pursuant to the Development Agreement, the analysis I have made above prior to the above extraction from the judgement would get immense support from the declarations made by the Supreme Court.

33. In the result, I answer the core issue raised at the threshold by holding that the continuation of the Section 34 Petition is not prohibited by the interim moratorium under Section 96 of the IBC.

34. Since the time this case was heard, there has been a change in roster. Therefore, with this judgement, declaring that Section 34 Petition may be proceeded with, it would only be proper that the parties now mention the matter before the Bench having the Section 34 jurisdiction in its roster.

Case Citation: (2026) ibclaw.in 4909 HC

35. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]

IBC Laws | www.ibclaw.in