



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

**COMMERCIAL ARBITRATION PETITION NO. 843 OF 2024**

Mr. Ajeet Madhukar Mulay  
Age : 56 years, Occupation : Business  
Residing at Shivneri Bungalow, Govind Nagar,  
Bansilal Nagar, Aurangabad 431 001 ... Petitioner.

**Versus**

1. Abhyudaya Co-Operative Bank Limited  
Having its administrative office at  
K.K. Tower, Abhyudaya Bank Lane,  
Off. G.D. Ambedkar Marg, Parel Village,  
Parel, Mumbai 400 012
2. Mr. Bhushan Pundlikrao Patil  
Residing at Plot no. 26, Jay Nagar,  
New Osmanpura, Aurangabad 431 005
3. Mr. Kunal Gopichand Pawar  
Residing at At Post Hingoli (Khurd)  
Taluka – Chalisgaon,  
District- Jalgaon 424102
4. Mr. Sanjay Bhanwarlal Mandhana  
Residing at 6-39, Chanakyapuri Phase II,  
Shahanoormiya Darga Road,  
Aurangabad 431005
5. Mrs. Anita Bhushan Patil  
Residing at Plot no. 26, Jay Nagar,  
New Osmanpura, Aurangabad 431 005
6. Mr. Sunil Laxman Somwanshi  
Residing at A-1-11, Bhosale Paradise,  
Opp. Range Hills Road, Bhosale Nagar,  
Pune 411 020 ... Respondents.

**WITH**  
**COMMERCIAL ARBITRATION PETITION NO. 849 OF 2025**

Monica Ajeet Mulay

Age : 53 years, Occupation : Business,

Residing at Shivneri Bungalow, Govind Nagar,

Bansilal Nagar, Aurangabad 431 001

... Petitioner.

**Versus**

1. Abhyudaya Co-operative Bank Limited

Having its administrative office at

K.K. Tower, Abhyudaya Bank Lane,

Off. G.D. Ambekar Marg, Parel Village,

Parel, Mumbai 400 012

2. Nirmangold Plasttech Private Limited

Having its registered office at Gut no.17,

Sultanpur Shivar, Near Jikthan phata,

Taluka – Gangapur, District- Aurangabad

3. Bhushan Pundlikrao Patil

Residing at Plot no. 26, Jay Nagar,

New Osmanpura, Aurangabad 431 005

4. Anita Bhushan Patil

Residing at Plot no. 26, Jay Nagar,

New Osmanpura, Aurangabad 431 005

5. Ajeet Madhukar Mulay

Shivneri Bungalow, Govind Nagar,

Bansilal Nagar, Aurangabad 431 001

6. Shekhar Bhushan Patil

Residing at Plot no. 26, Jay Nagar,

New Osmanpura, Aurangabad 431 005

... Respondents.

**WITH**  
**COMMERCIAL ARBITRATION PETITION NO. 1053 OF 2025**

Ajeet Madhukar Mulay

Age : 56 years, Occupation : Business

Residing at Shivneri Bungalow, Govind Nagar,  
Bansilal Nagar, Aurangabad 431 001

... Petitioner.

**Versus**

1. Abhyudaya Co-Operative Bank Limited  
Having its administrative office at  
K.K. Tower, Abhyudaya Bank Lane,  
Off. G.D. Ambekar Marg, Parel Village,  
Parel, Mumbai 400 012

2. Nirmangold Plasttech Private Limited  
Having its registered office at Gut no.17,  
Sultanpur Shivar, Near Jikthan phata,  
Taluka – Gangapur, District- Aurangabad

3. Bhushan Pundlikrao Patil  
Residing at Plot no. 26, Jay Nagar,  
New Osmanpura, Aurangabad 431 005

4. Anita Bhushan Patil  
Residing at Plot no. 26, Jay Nagar,  
New Osmanpura, Aurangabad 431 005

5. Monica Ajeet Mulay  
Shivneri Bungalow, Govind Nagar,  
Bansilal Nagar, Aurangabad 431 001

6. Shekhar Bhushan Patil  
Residing at Plot no. 26, Jay Nagar,  
New Osmanpura, Aurangabad 431 005

... Respondents.

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*Mr. Rahul Totala a/w. Ms. Vidisha Rohira and Ms. Iqra Qureshi for the Petitioner.*

*Mr. Sanjiv Punalekar a/w. Mr.Yogesh Mishra i/by PRS Legal for Respondent No.1.*

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**Coram : Sharmila U. Deshmukh, J.**  
**Reserved on : April 17, 2026**  
**Pronounced on: June 09, 2026**

**JUDGMENT :**

1. The Petitioners in this group of petitions are guarantors of financial assistance availed by M/s Nirmangold Alloys Private Limited and M/s.Nirmangold Plasttech Private Limited, who are sister concerns. The challenge is to the Arbitration Awards alongwith the orders passed in the applications filed by the Petitioners in the arbitration proceedings. The Learned Sole Arbitrator was appointed under Section 84 of the Multi-State Co-operative Societies Act, 2002 (for short, "**MSCS Act**") in applications filed by Abhyudaya Co-operative Bank Ltd. for recovery of the outstanding amounts. Common submissions were advanced by learned counsel for the parties and the Petitions are being disposed of by this common judgment.

**FACTUAL MATRIX:**

2. Commercial Arbitration Petition No.843 of 2024 has been filed by Ajeet Madhukar Mulay, who was the original Opponent No.5 in Arbitration Case No.ARB/ACB/VNL/2064 of 2022. The Claimant in the

arbitration case is Abhyudaya Co-operative Bank Limited. The principal borrower was M/s. Nirmangold Alloys Private Limited, which was undergoing corporate insolvency process and in view of the moratorium was not impleaded as party. Ajeet Mulay was impleaded in his capacity as guarantor alongwith other guarantors and Directors of M/s. Nirmangold Alloys Private Limited, who had given personal guarantee for repayment of the debt..

**3.** Commercial Arbitration Petition No.849 of 2025 has been filed by Monica Ajeet Mulay who was the original Opponent No.6 in Arbitration Case No ARB/ACB/VNL/2065 of 2022. The Claimant was Abhyudaya Co-operative Bank Limited and the principal borrower was M/s.Nirmangold Plasttech Private Limited, the sister concern of M/s. Nirmangold Alloys Private Limited. Monica Ajeet Mulay was impleaded in the capacity of guarantor alongwith other guarantors including Ajeet Mulay and Directors of M/s. Nirmangold Plasttech Private Limited, who had given personal guarantee for repayment of the debt.

**4.** Commercial Arbitration Petition No.1053 of 2025 is filed by Ajeet Mulay challenging the impugned Award of 12<sup>th</sup> February, 2024, which is already the subject matter of Arbitration Petition No.843 of 2024, and for setting aside the order dated 28<sup>th</sup> April, 2023 passed by the Learned Arbitrator in application below Exhibit 24 filed by the

Petitioner under Section 12 r/w Section 13 of the Arbitration and Conciliation Act, 1996 (for short, "**Arbitration Act**"), the order dated 25<sup>th</sup> January, 2024 passed in application below Exhibit 41 seeking opportunity of cross-examination of witness in Arbitration Case No.2065 of 2022 and also seeks the relief of framing of issues in Arbitration Case No.2065 of 2022.

5. Arbitration Case No.2064 of 2022 arises of arbitration proceedings invoked by the Disputant Bank seeking recovery of outstanding amount of Rs.34,18,53,481.21 w.e.f 1<sup>st</sup> May, 2022 till payment or realisation. The facts borne out of the impugned Arbitration Award is that M/s. Nirmangold Alloys Private Limited was the principal borrower, who had availed cash credit facility, letter of credit facility and term loans from the Respondent No.1-Bank in the year 2015. There was rescheduling of seven term loans in April, 2019 at the request of the principal borrower. The rescheduled term loans were secured by hypothecation of stock and book debts and plant and machinery and all the credit facilities were secured by mortgage of immovable properties. The documents executed by the guarantors in respect of the financial assistance availed by the principal borrower are set out in the Statement of Claim which included letters of guarantee and undertaking.

6. Due to 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 was not complied with. Hence, the Dispute came to be filed under Section 84 of MSCS Act.

7. During the pendency of arbitration proceedings, in view of the Petitions filed by the Opponent Nos.1 and 4 i.e. Bhushan Patil and Anita Patil under Section 94 of IB Code, the Learned Sole Arbitrator held that as moratorium had commenced, the arbitration cannot be proceeded against the Opponent Nos.1 and 4.

8. The impugned Award records the stand taken by the present Petitioner raising an objection to the jurisdiction of the Tribunal. It was contended that the documents of guarantee, arbitration agreement and deeds of mortgage are insufficiently stamped and unenforceable in law. During corporate insolvency resolution process, it was revealed by the forensic audit team appointed through the Resolution Professional that there was fraud by the Company and therefore, there is no legally enforceable debt against the Petitioner. The deed of guarantee is vitiated by fraud which is not non- arbitrable. The membership of the Bank and the execution of consent letters was denied. It was contended that the Petitioner is not signatory to the restructured credit facility and on restructuring of credit facility all prior sanctioned letters stood cancelled and the surety stand discharged, the contract being varied.

**9.** In Arbitration Case No.2065 of 2022, Ajeet Mulay and Monica Muley both were impleaded as party. Similar defence was raised by the Petitioners and in addition it was contended that the Bank had filed Company Petition No. 382 of 2022 against M/s. Nirmangold Plasttech Pvt. Ltd under Section 7 of IB Code, which was reserved for orders and the Bank has also put up the principal borrower's property for auction. An objection was taken about the Bank pursuing same cause of action in multiple fora.

**10.** In both the arbitration proceedings, the Petitioners had filed an application under Section 12 r/w Section 13 of the Arbitration Act claiming that the sole Arbitrator has failed to make mandatory disclosures, that the Sole Arbitrator was appointed for 55 arbitrations and the disclosures stated that there were only 19 on going arbitrations. It was contended that the Arbitrator has served in other arbitrations where the Bank was a party which gives rise to justifiable doubts regarding the independence and impartiality of the Arbitrator. The Petitioners also filed application seeking permission to cross examine the Bank's witness, which was rejected.

**11.** The Petitioners had filed an application on 6<sup>th</sup> February, 2024 seeking framing of issues in Arbitration Case No 2065 of 2022 in view of subsequent filing of written statement pursuant to consent minutes of order dated 19<sup>th</sup> October, 2023 passed in the Petition filed

in this Court. It is not shown that any order was passed on the said application.

**IMPUGNED AWARD DATED 12<sup>th</sup> FEBRUARY, 2024 IN ARBITRATION CASE NO.2064 OF 2022 AND ARBITRATION CASE NO.2065 OF 2022:**

12. The Learned Sole Arbitrator has rendered broadly identical findings in both the arbitration proceedings, which can be summarised as under:

- (a) The arbitration cannot be proceeded against the Opponent Nos.1 and 4 i.e. Bhushan Patil and Anjali Patil in view of commencement of moratorium upon filing of Petition under Section 94 of IB Code.
- (b) The Affidavit of Evidence of the Bank's witness proves the documents and hence the Bank's claim is duly proved.
- (c) The Opponents are members of the Bank and the documents of consent letters of surety, letters of guarantee, promissory notes are duly signed by the Opponents.
- (d) Petitioners did not apply for handwriting expert and his admitted signature can be compared with the signature of the documents and there is no mismatch.
- (e) As per the guarantee executed by the Petitioners, the available rights under Section 133, 134, 135, 139 and 141 of Indian Contract Act, 1872 stand waived and

restructuring of facilities was permitted. There is no discharge from the liability.

(f) In view of Section 2(4) of Arbitration Act, Part I of Arbitration Act applies to MSCS Act as the enactment is an arbitration agreement and the contention of insufficiency of stamp duty on arbitration agreement is rejected.

(g) In so far as insufficiency of stamp duty on guarantee agreement and mortgage deed are concerned, Section 4 of Maharashtra Stamp Act is applicable where there are several instruments and the principal instrument is chargeable with duty. Registering Authority has not raised any dispute about insufficiency of stamp duty. Petitioners have not raised any dispute at the execution of the documents regarding insufficiency of stamp duty and have agreed in writing that no objection will be raised for insufficiency of stamp duty.

**ORDER DATED 28<sup>th</sup> APRIL, 2022 PASSED ON APPLICATION FILED UNDER SECTION 12 r/w Section 13 OF ARBITRATION ACT :**

13. The Learned Sole Arbitrator in view of the decision of this Court in ***Kalpesh Shantikumar Mehta and others vs. NKGSB Co-op. Bank Ltd. and Anr.*** and ***KSM Multi trade LLP and other vs. NKGSB Co-op. Bank Ltd. and Anr.***<sup>1</sup> held that in statutory arbitration neither Entry 22 nor Entry 24 of Fifth Schedule affects the appointment made in

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1 2023 SCC OnLine Bom 3215

multiple matters by the Registrar. The Learned Sole Arbitrator held that mandatory disclosure has been made.

**ORDER DATED 25<sup>th</sup> JANUARY, 2024 PASSED ON APPLICATION SEEKING OPPORTUNITY TO CROSS EXAMINE THE BANK'S WITNESS:**

**14.** The Bank led evidence of one R.S. Gurav by filing an affidavit of evidence dated 15<sup>th</sup> September, 2023 and application was moved by the Petitioners seeking permission to cross examine the witness. The learned Arbitrator held that the matter pertains to banking transaction and the application filed by the Petitioners for cross-examination does not disclose any reason for cross-examination. It held that the Petitioners have to prove their defence. The notification dated 24<sup>th</sup> January, 2023 and suspension of the board of directors by the said notification is an admitted fact and the notification itself permits the normal activities of the Bank to go on and the notification does not assist the case of Petitioners's application for cross examination.

**SUBMISSIONS:**

**15.** Mr. Totala, Learned counsel appearing for the Petitioners submits that the Learned Arbitrator has not framed issues and conducted two separate arbitrations simultaneously without consent of the parties at Mumbai despite the Petitioners residing at

Aurangabad. He points out the identical findings in both the Awards to submit that the findings in the Awards are copy pasted and suffers from non application of mind.

**16.** He submits that two of the guarantors had filed Petitions under Section 94(1) of IB Code, which results in stay of the debt and hence the arbitration proceedings could not have been proceeded with against the Petitioners. He submits that the Learned Arbitrator stayed the proceedings only against Bhushan Patil and Anjali Patil and not against the Petitioners. He would further submit that Bhushan Patil and Anjali Patil had suppressed the fact that by order dated 16th September, 2023, the application of Bhushan Patil was dismissed with liberty to file fresh application and thereafter fresh application was filed. He submits that considering the imposition of moratorium, the Learned Arbitrator stayed the proceedings only against them, which is contrary to the settled position of law.

**17.** He submits that prior to filing of the statement of claim, Nirmangold Alloys Private Limited went into insolvency and under Section 14 of the IB Code, moratorium was imposed *qua* the debt and hence the arbitration proceedings could not have proceeded even against the present Petitioners.

**18.** He submits that the Arbitrator has violated the principles of natural justice by denying the Petitioners leave to cross examine the

Bank's witness and denying opportunity of filing evidence. He points out that the Learned Arbitrator has held that the Petitioner has not adduced any evidence and that his reply can be considered as evidence. He submits that the Petitioner filed his written statement on 20<sup>th</sup> October, 2023 after the issues were framed and despite the application dated 6<sup>th</sup> February, 2024 requesting for framing of issues, the Learned Arbitrator has rejected the same on the ground that CPC is not applicable.

**19.** He submits that the Arbitration Award suffers from patent illegality as it is based on unverified and unproved documents and that the original documents were not even produced on record. He submits that the impugned Awards hold that the claims are proved based on unproven documents, which is contrary to law and fundamental policy, which constitutes patent illegality justifying setting aside of the Awards under Section 34(2)(b) of Arbitration Act.

**20.** He would further point out that in the statement of defence specific objections were taken to the jurisdiction as the Petitioners were not members of the Bank, the insufficiently stamped deeds of guarantee, the issue of fraud which according to him is non arbitrable, the denial of execution of documents.

**21.** He would submit that the Learned Arbitrator has adopted an unscientific approach by comparing the Petitioners' signatures with

naked eye, whereas an expert ought to have been appointed under Section 26 of Arbitration Act and in view of specific case of the signatures being forged.

**22.** He would submit that pending the arbitration, an administrator came to be appointed on 3<sup>rd</sup> November, 2023 and there was no fresh authorisation from the administrator to continue with the arbitration. He would submit that the Award was passed on 12<sup>th</sup> February, 2024, whereas the term of 12 months was expired on 3<sup>rd</sup> March, 2022 and no extension was granted.

**23.** He submits that despite the specific contention that the Petitioners had not signed the membership form, the Learned Arbitrator has held that the Petitioners have become members of the Bank. He would further point out the requirements of membership set out in Section 25 of the MSCS Act and would submit that the Learned Arbitrator has held the Petitioners to be members only on the basis of forms produced by the Bank.

**24.** He would further submit that the arbitration Award grants injunction against the mortgaged property which is non arbitral dispute. He would further submit that one of the guarantors had filed FIR against the company and the Bank, and issue of fraud is non arbitrable. He would further point out that the Learned Arbitrator though held that the fraud is not an arbitrable dispute has thereafter

held that the money lent by the disputant Bank was not money of any wrongful gain but it is public money.

**25.** He would further point out that the findings of the learned Arbitrator that the guarantee itself permits for restructuring of facilities and therefore it cannot be accepted that the guarantor is discharged from the liability is contrary to statute and is patently illegal.

**26.** He points out that in so far as insufficiency of stamp duty in respect of seven guarantee agreements and six mortgage deeds, the Learned Arbitrator has held that it is the borrower, who has to bear the burden of stamp duty and that the Petitioner in writing has agreed that he will not raise any objection for insufficiency of stamp duties, which is contrary to statute. In support, he relies upon the following decisions:

- (i) *Vedansh Hospitality and Resorts Ltd. and Ors. vs. New India Co-operative Bank Ltd. & Ors.*<sup>2</sup>,**
- (ii) *M/s. Divya Enterprise and Ors. in Capri Global Capital Limited vs. M/s.Divya Enterprise (Partnership Firm) and Ors.*<sup>3</sup>,**
- (iii) *Deepti Prakash Ghare vs. NKGSB Co.Op. Bank Ltd.*<sup>4</sup>,**
- (iv) *Neepa Real Estate Pvt. Ltd. vs. State of Maharashtra and Ors.*<sup>5</sup>,**

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2 Arbitration Petition No.484 of 2012 dated 29.01.2013

3 IA(L)No.25700 of 2025 in Com.Suit (L) No.23360 of 2025 dated 09.10.2025

4 Comm.Arbitration Petition (L) No.6358 of 2022 dated 07.01.2023

5 Writ Petition No.1395 of 2023 dated 13.12.2025

- (v) ***M/s. Hotel Sea Point Pvt. Ltd. Puri vs. M/s. Blueline Resorts Pvt. Ltd.***<sup>6</sup>,
- (vi) ***Rajlaxmi Multistate Credit Co-op. Society Ltd. Vs. Smt. Ashwini Anand Anchatwar and Ors.***<sup>7</sup>,
- (vii) ***Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. and Ors.***<sup>8</sup>,
- (viii) ***Naresh Kanayalal Rajwani and Ors. vs. M/s. Citi Financial Consumer Finance India Ltd.***<sup>9</sup>,
- (ix) ***Vidya Drolia & Ors. vs. Durga Trading Corporation***<sup>10</sup>,
- (x) ***DJO v. DJP and Ors.***<sup>11</sup>,
- (xi) ***Sukhbir Singh v. Hindustan Petroleum Corporation Ltd.***<sup>12</sup>,
- (xii) ***Prema Amarlal Gera v. Memon Co-operative Bank Ltd.***<sup>13</sup>,
- (xiii) ***M/s Narinder Singh and Sons vs. Union of India,***<sup>14</sup>,
- (xiv) ***Serosoft Solutions Pvt. Ltd. vs. Dexter Captial Advisors Pvt. Ltd.***<sup>15</sup>,
- (xv) ***Tata Capital Ltd. v. Geeta Passi and Ors.***<sup>16</sup>,
- (xvi) ***Smt. Sunita vs. Smt. Parmjeet Kaur***<sup>17</sup>,
- (xvii) ***S. Madhan vs. A Venkateshwaran***<sup>18</sup>,
- (xviii) ***Bi-water Penstocks Ltd. v. Municipal Corporation of Greater Bombay and Anr.***<sup>19</sup>,

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6 AIR 2025 ORISA 105

7 Arbitration Appeal No.116 of 2025 dated 17.03.2026

8 (2011) 5 SCC 532

9 Arbitration Petition No.427 of 2013 dated 17.08.2025

10 (2021) 2 SCC 1

11 2024 SGHC (I) 24

12 2020 SCC OnLine Del 228

13 2017 SCC OnLine Bom 72

14 Civil Appeal No.6734 of 2021 dated 18.11.2021

15 Civil Appeal Nos.51-52 of 2025 dated 03.01.2025

16 2024 SCC OnLine Bom 1897

17 (2025) 3 ADJ 226

18 MANU/TN/9314 /2022

19 Appeal No.457 of 2002 dated 24.11.2010

***(xix) BRS Ventures Investments Ltd. vs. SREI Infrastructure Finance Ltd. and Anr.<sup>20</sup>,***

***(xx) V. Shankar and Anr. vs. The Authorised Officer and Anr.<sup>21</sup>.***

**27.** Mr. Punalekar, Learned counsel appearing for the Respondent No.1 Bank submits that the Learned Arbitrator has not granted non arbitrable reliefs as the relief of debt adjudication falls under Section 84 of the MSCS Act and all other reliefs are ancillary reliefs. He submits that there are two arbitration disputes of two borrowers who are related entities and were heard together wherein the pleadings were similar, if not identical, and that is the reason for identical reasoning in both the Awards which does not vitiate the Awards.

**28.** He submits that the request for cross-examination was made at the end of the proceedings and there was no case made out for cross examination in the application filed by the Petitioners. He submits that in so far as absence of admission and denial of documents is concerned, there is no prejudice caused to the Petitioners.

**29.** He submits that the disclosures given by the Arbitrator was in substantial compliance of the law. He would further submit that the moratorium under Section 14 of the IB Code was not applicable to the Petitioners. He would submit that insofar as the objection that no consent of the Petitioner was taken to conduct arbitration petition is

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20 Civil Appeal No.4565 of 2021 dated 23.07.2024

21 SARFAESI Application No.470 of 2022 dated 12.02.2024

concerned, the Arbitrator was appointed by the Central Registrar and no prejudice is caused to the Petitioners by holding the proceedings at Mumbai. He submits that the written statement itself was filed belatedly and the application for framing of issues was not submitted till the end of the proceedings.

**30.** He submits that the objection to jurisdiction on the ground of Petitioners not being the member of the Respondent has been sufficiently negated by the membership proof which is already produced on record. He submits that it is not the case of the Petitioners that the membership forms are forged.

**31.** He submits that the Petitioner's submission on illegal findings on forgery signature by comparing documents is an afterthought and that the Petitioner has consciously joined the loan transactions. He submits that the ruling of the Learned Arbitrator on the unstamped agreement and the documents being proved is reasoned and proper warranting no interference as there is also a registered mortgage signed by the Petitioner admitting the availment of loan.

**32.** He would further submit that there can be no discharge of guarantor considering the covenants of personal guarantee. He would submit that the statement of accounts was duly certified and therefore there were no necessity of leading evidence to prove amounts claimed in the statement of claim.

**33.** He submits that appointment of an administrator does not result in invalidating earlier Acts and Resolutions of the Bank. He submits that the issues which are now being raised by the Petitioner in the present petition were not at all raised during the arbitration and therefore cannot be considered by this Court under Section 34 of the Arbitration Act.

**34.** He submits that insofar as Monica Mulay is concerned, there is no fresh deed of guarantee taken after restructuring, however, her guarantee was continuing guarantee and she did not ask for release and the Bank has not specifically released the guarantee. He submits that insofar as the stamping of deed of guarantee is concerned, as the document says that the payment will be made on demand, the same is in the nature of promissory note. He submits that the stamp duty was paid on the loan agreement which was the principal document.

**35.** In rejoinder, Mr. Totala would submit that there is no answer to the moratorium *qua* the debt or on the aspect of non arbitrability on issues of mortgage. He submits that the submission before the Learned Arbitrator that the deed of guarantee was in nature of indemnity in which case loss will have to be proved. He submits that different contentions were raised but the Awards are copy pasted.

**REASONS AND ANALYSIS:**

**36.** Mr. Totala has mounted a multi pronged attack on the impugned Awards assailing each and every finding of the Learned Arbitrator including seeking factual appraisal. Section 34(2)(a) of the Arbitration Act enumerates the specific grounds on which the arbitration award can be set aside by the Court. Section 34(2)(b) provides that the award may be set aside if the subject matter of the dispute cannot be settled by arbitration as per applicable law or the arbitral award is in conflict with public policy of India. Explanation I clarifies the eventualities in which an arbitral award can be said to be in conflict with the public policy i.e. if (a) it's making is induced by fraud, corruption or in violation of Section 75 or Section 81 of Arbitration Act, (b) when it is in contravention of fundamental policy of India law or (c) when it conflicts with the most basic notions of morality or justice. Explanation II provides that no review on the merits shall be undertaken when determining a contravention of fundamental policy of Indian Law. Section 34(2A) introduced by Amendment Act of 2016 provides an additional ground of patently illegality appearing on the face of the Award for setting aside domestic Award. The proviso clarifies that the award shall not be set aside merely on the ground of erroneous application of the law or by re-appreciation of evidence.

**37.** The impugned Awards are challenged broadly on the following grounds:

- (a) conduct of arbitration proceedings despite the moratorium imposed under IB Code by disregarding the judicial pronouncements.
- (b) violation of principles of natural justice by refusing leave to cross examine the Banks' witness.
- (c) finding of proof of claim based on unverified and unproved forged documents which are unstamped agreements.
- (d) contravention of provisions of The Indian Contract Act, 1872 which discharges guarantor upon material alteration of the contract without consent of surety.
- (e) patent illegality as no evidence led by Bank to prove the debt as claimed and failure to consider that by reason of cancellation of license of the Bank on 24<sup>th</sup> November, 2023, the witness had no authority to file evidence on behalf of the Bank.
- (f) absence of jurisdiction as Petitioners are not members of the Bank.
- (g) adjudication of matters inherently non arbitrable by issuance of directions contained in clauses (D), (E) and (F) of operative part of the impugned Awards.
- (h) non application of mind evident from copy pasted reasons in the impugned awards.
- (i) Non framing of issues and conduct of two separate arbitration proceedings simultaneously without consent of parties at head office of Bank despite the Petitioners residing at Aurangabad.

- (j) Non compliance with Section 12 of the Arbitration Act as the disclosure is defective.

**38.** In *Ssangyong Engineering and Construction Company Ltd. vs National Highway Authority of India (NHAI)*<sup>22</sup>, the Hon'ble Apex Court considered the scope of interference pre and post 2015 amendment to the Arbitration Act. It held that the expression "public policy of India" contained in Section 34 would now mean the 'fundamental policy of Indian law as explained in paragraph 18 and 27 of *Associate Builders vs. Delhi Development Authority*<sup>23</sup>. Paragraph 27 of *Associate Builders* (supra) holds that the binding effect of the judgement of superior court being disregarded would be equally violative of the fundamental policy of Indian law.

**39.** The principal borrower in Arbitration Case No No.2065 of 2022 was M/s. Nirmangold Plasttech Private Limited whereas in Arbitration Case No.2064 of 2022, the principal borrower was M/s. Nirmangold Alloys Private Limited which was admitted to insolvency and was undergoing corporate insolvency resolution process under the IB Code.

**40.** Two of the guarantors i.e. Bhushan Pundlikrao Patil and Anita Bhushan Patil claimed benefit of the interim moratorium under Section 96 of IB Code premised on filing of Petitions under Section 94 of the IB Code for personal insolvency. Under the statutory provisions

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<sup>22</sup> (2019) 15 SCC 131

<sup>23</sup> (2015) 3 SCC 49

of IB Code, the filing of applications under Section 94 of IB Code 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 proceeding pending in respect of any debt shall be deemed to have been stayed.

**41.** The Learned Arbitrator accepted the imposition of statutory moratorium and stayed the arbitration proceedings *qua* Bhushan Patil and Anita Patil, however, continued the proceedings as against the other guarantors including the Petitioners. Mr. Totala has pointed out that upon earlier application of Bhushan Patil being dismissed, a fresh application was filed by him. The position of law which has been settled by judicial pronouncements of this Court as well as the Hon'ble Apex Court in the context of interim moratorium under Section 96 of IB Code is that the moratorium is imposed on the debt and not the debtors. The filing of the personal insolvency applications extends the benefit of moratorium not only to the applicants but has the effect of keeping all the debts in abeyance.

**42.** In *Tata Capital Ltd. vs. Geeta Passi and Anr.* (supra), the Petition therein challenged the order of Learned Arbitrator which had kept in abeyance the proceedings in view of the moratorium under Section 96 of IB Code. In the facts of that case, the Arbitrator stayed the arbitration proceedings against the proprietor and one of the

guarantor. The other guarantors filed an application seeking indefinite stay in view of Section 96(1)(b)(i) of IB Code, which came to be allowed. This Court considered the statutory definition of "debt" under IB Code. It held that the expression "any person" used in defining "debt" would mean that no distinction can be drawn between principal borrower or guarantor. It further held that when Section 96 speaks of moratorium in respect of "any debt", the same would mean the entire debt irrespective from whom it is due.

**43.** The Learned Single Judge noted the decision of Hon'ble Apex Court in the case of *State Bank of India Vs. V. Ramkrishnan and Anr.*<sup>24</sup>, which had distinguished the moratorium as contemplated under Sections 14 and 96 of the IB Code to hold that protection of moratorium under Section 96 is greater than that of Section 14, in that pending legal proceedings in respect the "debt" and not the debtor are stayed and as such moratorium is in respect of debt and not the debtor. The Learned Single Judge of this Court held in paragraph 10 and 12 as under:

**"10.** Once this is so, then when the National Company Law Tribunal granted a moratorium under section 96 of the Insolvency and Bankruptcy Code in favour of Mr. Tarun Kapoor who was the principal borrower being the proprietor of SMC and Mrs. Pavan Kapoor, being the guarantor, the same will have to be construed as a moratorium in respect of the entire "debt". It is the "debt", and its entitlement which has been claimed to be put

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before the learned arbitrator, for decision, in the arbitration proceedings. The claim does not make any distinction between a "debt" ,vis-a-vis Mr. Tarun Kapoor as a principal debtor, or the other parties thereto as the guarantors or even considering their coextensive liability. The "debt",is the debt of SMC/Tarun Kapoor as principal borrowers as well as of the guarantors. 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 No. 4, Mr. B.L. Passi. Though it can be said that the liability of original respondent No. 4, late Mr. B.L. Passi, was co-terminus with the principal borrower and the other guarantors, the liability of the present respondents, would be restricted to the assets of late Shri B.L. Passi, to the extent to which they would inherit the same. Be that as may, a distinction cannot be carved out, in respect of the "debt",award in respect of which is claimed in the arbitration proceedings, for the purpose of continuation of the arbitral proceedings, between the liability of the principal borrower/guarantor who have been granted a moratorium and the others who have not approached the National Company Law Tribunal, as the word "debt",as used in section 96 of the National Company Law Tribunal, has to be held to be the "debt", in its entirety and not otherwise. (Emphasis supplied)

**12.** It is also necessary to note that there is no provision in the Arbitration and Conciliation Act, 1996 for splitting up of arbitration proceedings, by conceiving of a situation of the arbitration proceedings being stayed against some of the parties and going ahead against some. The arbitration proceedings will have to be decided in their entirety against all the parties and the entitlement of the claimant and the liabilities of the respective respondents, will be determined on the basis of evidence which may be led therein, which cannot be on a piecemeal basis."

**44.** In the case of *Dilip B. Jiwrajka Vs. Union of India*<sup>25</sup>, , the Hon'ble Apex Court considered the impact of moratorium under

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Section 14 versus the interim moratorium under Section 96 of Arbitration Act. The Hon'ble Apex Court held that the crucial words which are used in clause (b)(i) and (ii) of Sub-section (1) of Section 96 are "in respect of any debt" as opposed to a debtor and that Clause (b) of Sub-section (1) indicates that the purpose of interim moratorium is to restrain the initiation or the continuation of legal action or proceedings as against the debt. The Hon'ble Apex Court contradistinguished the provisions of Section 96 from Section 14 of IB Code to hold that the protection mandate of Section 96 of the Insolvency and Bankruptcy Code is therefore in respect of 'debt' and not the debtor.

**45.** The continuation of the arbitration proceedings by the Learned Arbitrator against the Petitioners despite the interim moratorium imposed *qua* the debt constitutes grant of relief in respect of an presently unenforceable debt. It is settled that the expression "fundamental policy of Indian law" must amount to breach of some legal principle or legislation which is so basic to Indian law that it is not susceptible of being compromised. It refers to the principles and legislative policy on which Indian statutes and laws are founded and connotes the basic and substratal rationale, values and principles which form the bedrock of laws in our country. ***(See Vijay Karia and***

***Ors. vs Prysmian Cavi E Sistemi SRL and Ors.)***<sup>26</sup>

**46.** The impugned Awards resulting in enforcement of debt, which by reason of the statutory interdict is incapable of being enforced albeit temporarily, runs contrary to the fundamental principles of Indian law which recognises enforcement of laws in respect of legally enforceable debts. The impugned Awards disregard the binding judicial pronouncements of this Court as well as the Hon'ble Apex Court, are violative of fundamental policy of Indian law and are liable to be set aside under Section 34(2)(b)(ii) of Arbitration Act.

**47.** The other ground on which the impugned Awards cannot be sustained is the violation of principles of natural justice by refusing the Petitioners the right to cross examine the Bank's witness.

**48.** The Bank led the evidence of its witness by filing Affidavit of Evidence and application came to be filed by the Petitioners seeking permission to cross examine the witness. The Learned Arbitrator has gone into the sufficiency of reasons for cross examination to reject the application and has held that the burden is upon the Petitioners to prove the defence.

**49.** Section 18 of Arbitration Act provides that the parties shall be treated with equality and each party shall be given a full opportunity to present his case. Section 24 of Arbitration Act provides that in

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<sup>26</sup> (2020 11 SCC 1)

absence of an agreement between the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument or whether the proceedings shall be conducted on the basis of documents and other materials. The proviso to Section 24(1) of the Arbitration Act provides that the arbitral Tribunal shall hold oral hearings on a request by a party.

**50.** In *Sukhbir Singh vs Hindustan Petroleum Corporation Ltd.* (supra), the Delhi High Court considered the challenge to the arbitration award on the ground of failure to permit cross examination. After examining the statutory scheme of Section 24 of Arbitration Act, the Delhi High Court held in paragraph 44 as under:

“44. From the aforesaid materials, and upon an interpretation of Section 24 consistent with the requirements of natural justice, I am of the view that the first proviso to Section 24(1) requires a party’s request for oral hearings at the stage of evidence or arguments to be granted. Unless the right to require oral evidence or oral arguments have been waived by a prior agreement to the contrary between the parties, the proviso to Section 24(1) expresses a legislative preference for the grant of oral hearing at the request of either party....”

**51.** The provisions of Section 24 vesting discretion in the Arbitral Tribunal to decide the manner of conduct of proceedings is subject to the request by a party seeking oral hearing. Even accepting the discretion vested in the Arbitral Tribunal, in the present case, the Learned Sole Arbitrator had permitted the Bank to lead evidence and

thus the decision was to hold oral hearings. The principle of equal treatment mandates the liberty of cross examination to the opposite party. Equally important was the right of cross examination as the Learned Arbitrator based on the evidence of the Bank's witness and the documents produced by the witness, has rendered a finding of the Bank's claim being proved. The Learned Arbitrator after rejecting the Petitioner's application has observed that the Petitioners had not led evidence and treated the written statement as evidence.

**52.** In the written statement, there are specific denials to the execution of the letters of guarantee/demand promissory note/undertaking etc. and plea of the documents being forged. The Learned Arbitrator has compared the signatures on the admitted documents to hold that the documents have been executed by the Petitioners.

**53.** The impugned Awards shows that the Learned Sole Arbitrator has arrived at a finding that (a) in view of the evidence of the Bank's witness, the documents are proved, (b) comparison of the Petitioners' admitted signatures with the signatures on the documents shows that the documents were executed by the Petitioners and (c) the contents of the documents show due execution by the Petitioners.

**54.** The finding of proof of claim was interlinked with the proof of execution of the documents by the Petitioners. Mr. Totala has

submitted that the original documents were not even produced on record, which has not been disputed by Mr. Punalekar. It is evident that the execution of documents by the Petitioners was contested fact which required oral evidence and the Petitioner's request for cross examination of the witness was reasonable. The Learned Arbitrator while rejecting the application has held that the Petitioners are required to prove their defence. One of methods of proof of the defence is cross-examination of the Banks' witness.

**55.** The Hon'ble Apex Court in the case of ***M/s. Narinder Singh and Sons vs. Union of India*** (supra), has held that the lack of full opportunity as envisaged by Section 18 of the Act impedes a fair and just decision and had consequently set aside the Award in terms of clause (iii) to Section 34(2)(a) as well as clause (ii) to Section 34(2)(b) of Arbitration Act.

**56.** Under Section 18 of the Arbitration Act, the parties have to be given a full opportunity of presenting its case. The right of cross examination is an integral aspect of *audi alteram partem* rule. The refusal of permission for cross examination violates the right of fair hearing and equal treatment making out a ground under Section 34(2) (a)(iii) of Arbitration Act.

**57.** The impugned Awards hold the Bank's claim to be proved by relying on the evidence adduced by the Bank. The refusal of permission to cross examine the Bank's witness renders the findings

arrived at by the Learned Arbitrator *qua* the evidence patently illegal being a decision based on no evidence. The impugned Award is thus liable to be set aside under Section 34(2-A) of Arbitration Act.

**58.** In so far as the challenge on the ground of discharge of surety by reason of variance in terms of contract by restructuring/ enhancement of credit facilities is concerned, the Learned Arbitrator has held that the guarantee executed by the Petitioners gave consent for making any variance, change or modification as the Bank may think fit and thus held that there was waiver of all the rights available under Sections 133, 134, 135, 139 and 141 of Indian Contract Act, 1872.

**59.** The question as to whether the Petitioners had agreed to waive their rights is required to be considered in the context of terms contained in the deed of guarantee. The Learned Arbitrator has examined the terms of the guarantee to hold that there is waiver. An examination into the aspect of terms of the guarantee would involve factual appraisal and merit based review of the Awards, which is impermissible. It also needs to be borne in mind that mere contravention of substantive law of India does not afford a ground under Section 34 of Arbitration Act.

**60.** The finding of the Learned Arbitrator on the issue of insufficiency of stamps on the mortgage deed and letters of guarantee is based on the provisions of of Section 4 of the Maharashtra Stamps Act, which governs the stamp duty for single

transaction completed using multiple instruments and provides for payment of full duty only on primary document while the ancillary documents incurred on nominal stamp duty. The Learned Arbitrator has noted that the provisions grant liberty to the parties to determine for themselves which of the instruments so employed shall be deemed to be the principal instrument and it is not the contention that such liberty has not been availed.

**61.** An inquiry into the insufficiency of the stamps on the documents would entail an inquiry into the issue as to which is the principal document and whether the same has been duly stamped, which enters into the realm of fact finding inquiry. Such an inquiry not conducted before the Learned Arbitrator cannot be permitted to be conducted under Section 34 of Arbitration Act.

**62.** The objection to jurisdiction was premised on the ground that the Petitioners are not members of the Respondent No.1-Bank. The learned Arbitrator has considered the affidavit of evidence filed by the Respondent No.1-Bank to hold that the Petitioners have become members of the Disputant-Bank as the relevant application forms for the membership of the Disputant Bank duly signed by the Petitioners along with the personal information are placed on record. The Learned Arbitrator is the master of the quality and quantity of evidence and this Court cannot go into the adequacy of the evidence

or re-appreciate the findings to substitute its own view. The Bank has placed documentary evidence on record which has been considered by the Learned Arbitrator to render a finding about the Petitioner's membership, which cannot be interfered in view of limited scope of interference under Section 34 of Arbitration Act.

**63.** The contention as regards failure to provide true and correct disclosure under Section 12 of the Arbitration Act as a ground of challenge must be shown to fall within the exhaustive and codified statutory framework of Section 34 of Arbitration Act. If the incorrect disclosure hides a conflict of interest, the same would create justifiable doubts about the Arbitrator's impartiality. It needs to be noted that the present case is of statutory arbitration and the Learned Sole Arbitrator has been appointed by the Commissioner of Co-operation and Registrar of Co-operative Societies. The appointment is challenged as being hit by Entry 24 of Schedule V of the Arbitration Act. The Learned Arbitrator has considered the decisions of this Court holding that the mere fact that the Arbitrator is appointed under Section 84 of MSCS Act in more than 3 arbitration is not a ground to create doubt about its independence and impartiality. I do not find any case made out under Section 34 of Arbitration Act to set aside the impugned Awards on this ground.

**64.** The impugned Awards declare the subsistence of the Bank's

charge over the mortgaged properties and permits the disposal of the mortgaged property for recovery of the dues. It further injuncts the Petitioners from creating third party rights in respect of the mortgaged/hypothecated properties and directs the attachment of the properties till sale and realisation thereof. These directions have been assailed as being non arbitrable. By the said directions the Learned Sole Arbitrator has directed enforcement of the mortgage by sale. The Hon'ble Apex Court has held in **Booz Allen and Hamilton Inc. vs SBI Home Finance Ltd.** (supra) that the enforcement of right of mortgage is enforcement of right in rem, which will have to be decided by the Courts of law and not by Arbitral Tribunals.

**65.** The said directions cannot be said to be ancillary reliefs granted and disregards the binding effect of the decision of Hon'ble Apex Court in **Booz Allen and Hamilton Inc. vs SBI Home Finance Ltd.** (supra).

**66.** In so far as the awards being copy pasted, the Petitioners had raised substantially common defences and resultantly, the findings are identical. I am also not inclined to consider the other issue as to conduct of both the proceedings simultaneously which does not fit in the scheme of statutory challenge under Section 34 of Arbitration Act. In so far as the leading of evidence by the witness in absence of authorisation, no such objection was raised before the Learned Arbitrator.

**67.** In light of the above discussion, the conclusion is summarised as under:

- (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.
- (b) The refusal of opportunity of cross examination to the Petitioners violates the principles of natural justice and Section 18 and Section 24 of Arbitration Act. Resultantly the impugned Awards are liable to be set aside under Section 34(2)(a) (iii) of Arbitration Act.
- (c) An examination into the aspect of terms of the guarantee would involve factual appraisal and merit based review of the Awards, which is impermissible. A mere contravention of substantive law of India does not afford a ground under Section 34 of Arbitration Act.
- (d) The findings of the Arbitral Tribunal on the sufficiency of stamp duty requiring factual appraisal cannot be gone into by this Court under Section 34 of Arbitration Act.
- (e) The findings of Arbitral Tribunal that the Bank’s claim stands proved is based on no evidence and suffers from patent illegality under Section 34 (2-A) of Arbitration Act.

**69.** In view of the above, the Petitions succeed. The impugned Awards dated 12<sup>th</sup> February, 2024 passed in ARB/ACB/VNL/2065 of 2022 and in ARB/ACB/VNL/2064 of 2022 are hereby quashed and set aside.

**[Sharmila U. Deshmukh, J.]**