

**IN THE HIGH COURT AT CALCUTTA**  
**COMMERCIAL APPELLATE DIVISION**  
**ORIGINAL SIDE**

Present:

**The Hon'ble Justice Debangsu Basak**  
And  
**The Hon'ble Justice Md. Shabbar Rashidi**

**AD COM 3 of 2026**

**GA COM 2 of 2026**

**Ambootia Tea Exports Private Limited & Ors.**

**Vs.**

**Sri Rani Sati Abasan Private Limited**

For the Appellant :Mr. Sakya Sen, Sr. Adv.  
Mr. Abhirup Chatterjee, Adv.  
Mr. Rishov Das, Adv.

For the Respondent :Mr. Tilak Kr. Bose, Sr. Adv.  
Mr. Aniruddha Mitra, Sr. Adv.  
Mr. Deepnath Roychowdhuri, Adv.  
Mr. Debraj Sahu, Adv.  
Mr. Bhaskar Dewadi, Adv.  
Mr. Jyoti Routh, Adv.  
Ms. Ankita Baid, Adv.  
Mr. Tamoghna Saha, Adv.

Hearing Concluded on : June 30, 2026

Judgement on : July 9, 2026

**DEBANGSU BASAK, J.:-**

- 1.** Appellant has assailed the judgment and decree dated February 5, 2026 passed in GA COM 3 of 2024, GA COM 4 of 2024 in CS COM 450 of 2024.
- 2.** By the impugned judgment and decree, learned Single Judge has rejected the petition under Order VII Rule 11 of the

Code of Civil Procedure, 1908 filed at the behest of the appellant being GA COM 4 of 2024. Learned Single Judge has allowed the application of the respondent filed under Order XII Rule 6 of the Code of Civil Procedure, 1908 being GA COM 3 of 2024.

**3.** Learned Senior Advocate appearing for the appellant has contended that, appellant had applied under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the plaint while the respondent had applied for judgment on admission under Order XII Rule 6. By the impugned judgment and decree, learned Single Judge has dismissed the application under Order VII Rule 11 of the appellant while allowing the application of respondent under Order XII Rule 6 of the Code of Civil Procedure, 1908. He has contended that, the appellant is aggrieved by the impugned judgment and decree to the extent that it proceeds to decree the suit in favour of the respondent under Order XII Rule 6 of the Code of Civil Procedure, 1908, in the present appeal.

**4.** Learned Senior Advocate appearing for the appellant has contended that, the subject matter of the suit does not involve a commercial dispute within the meaning of the Commercial Courts Act, 2015. He has referred to the plaint in

this regard. He has contended that, the suit was for recovery of money lent and advanced. The plaintiff is not a banker nor carries on money lending business. Therefore, the suit could not have been classified as involving a subject matter which is a commercial dispute within the meaning of the Act of 2015.

**5.** Without prejudice to such contention, learned Senior Advocate appearing for the appellant has contended that, the suit was filed on December 12, 2022. On the date when, the suit was filed as against the appellant, there was a moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 operating. In support of such contention, he has drawn the attention of the Court to the fact that, a petition under Section 95 of the Insolvency and Bankruptcy Code, 2016, was instituted before the National Company Law Tribunal (NCLT), Kolkata. NCLT had rejected such application on September 22, 2021. On appeal, National Company Law Appellate Tribunal (NCLAT) had revived the proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016 by the order dated May 27, 2022. Subsequent thereto, NCLT had passed orders on July 22, 2022 and September 5, 2022. NCLT had passed an order of

admission of the proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016 on June 5, 2024.

6. Learned Senior Advocate appearing for the appellant has contended that, since, the suit was filed on December 22, 2022 and the date of institution of the suit fell within the period from May 27, 2022 till June 5, 2024, when the moratorium under Section 96 was in operation, the suit could not have been filed in view of Section 96 of the Insolvency and Bankruptcy Code, 2016.

7. Learned Senior Advocate appearing for the appellant has contended that, no commercial document was executed by the appellant in favour of the respondent. The respondent has not claimed itself to be a banker or involved in any money lending business. In support of such contention, he has referred to **2022 SCC OnLine Cal 3010 (Venkatesh Vincom Private Limited vs. Spice of Joy, Multicuisine Restaurant cum Bar and Others)**.

8. Learned Senior Advocate appearing for the appellant has relied upon **2024 Volume 5 Supreme Court Cases 435 (Dilip B. Jiwrajka vs. Union of India and Others)** and **2018 Volume 17 Supreme Court Cases 394 (State Bank of India**

***vs. V. Ramakrishnan and Another***) in support of the contention that, the suit was not maintainable.

**9.** Learned Senior Advocate appearing for the respondent has contended that, the suit cannot be said to be barred under Section 96 of the Insolvency and Bankruptcy Code, 2016. He has contended that, the moratorium prescribed under Section 96 of the Insolvency and Bankruptcy Code, 2016 did not extend to the principal borrower. He has contended that, Insolvency and Bankruptcy Code, 2016 is a complete Code in itself. He has pointed out that, Insolvency and Bankruptcy Code, 2016 was divided into separate parts governing different debtors. Part II of the Insolvency and Bankruptcy Code, 2016 has dealt with the insolvency resolution process of corporate debtors exclusively, while Section 94, 95 and 96 under Part III Insolvency and Bankruptcy Code, 2016 exclusively dealt with insolvency resolution and bankruptcy for individual and partnership firms.

**10.** Learned Senior Advocate appearing for the respondent has referred to Section 3 of the Insolvency and Bankruptcy Code, 2016 and contended that, the definitions therein are general. He has contended that the general definitions

appearing therein are applicable to various provisions of the Insolvency and Bankruptcy Code, 2016 unless the context otherwise required. He has pointed out that Section 5 of the Insolvency and Bankruptcy Code, 2016 relates to definitions of certain provisions relating to Part II. He has also referred to Sections 7 and 14 of the Insolvency and Bankruptcy Code, 2016 and pointed out that they are not applicable to the facts of the present case.

**11.** Learned Senior Advocate appearing for the respondent has referred to the definition of ‘debt’ appearing in Section 3 (11) of the Insolvency and Bankruptcy Code, 2016. He has contended that, the word ‘debt’ will have to be considered in respect of any claim due from any person. He has contended that, the interim moratorium under Section 96 relates to individuals and partnership firms and thus any person cannot refer to any corporate entity. According to him when, the phrase “in relation to all debts” occurs in Section 96, it necessarily means all debtor’s liability or obligation in respect of a claim which is due from the person concerned, namely, individual or the partnership firm. According to him, under no stretch of imagination corporate debtor can be roped in. According to him, there is no separate definition of ‘debt’

included in Section 5 and Section 79 of Insolvency and Bankruptcy Code, 2016 for that reason only. He has relied upon **2018 Volume 17 Supreme Court Cases 394 (State Bank of India vs. V. Ramakrishnan and Another)**, **2021 Volume 8 Supreme Court Cases 481 (Laxmi Pat Surana vs. Union Bank of India and Another)**, **2023 Volume 237 Company Cases 294 (Axis Trustee Services Ltd. (C.S. (Comm) No. 8 of 2021) vs. Brij Bhushan Singal and another)**, **2026 Volume 267 Company Cases 53 (IL & FS Financial Services Ltd. Vs. Serveall Construction P. Ltd. & Ors.)** in this regard.

**12.** Learned Senior Advocate appearing for the respondent has contended that, no case of guarantee has been pleaded in respect of the defendant Nos. 2 and 3 in the suit. Such defendants have been impleaded in their capacity as directors of the appellant. Respondent had claimed money against the defendant Nos. 2 and 3 on account of mis-representation, admission and acknowledgement of liability.

**13.** Learned Senior Advocate appearing for the respondent has contended that, when, the respondent had filed the suit, it did not know of the proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016.

**14.** Learned Senior Advocate appearing for the respondent has contended that the entire decree is not bad in law. He has referred to the ground of appeal. With regard to the joint and severable liability in the plaint, learned Senior Advocate appearing for the respondent has contended that, the impugned judgment and decree has passed a decree jointly and severally against all the defendants. He has referred Black's Law Dictionary 6th edition for the definition of joint and several liability. He has referred to Section 43 of the Indian Contract Act, 1872 and submitted that, the same entitles the respondent to enforce the whole promise against any one or a number of joint promisors. He has contended that, the respondent is legally entitled to recover the decretal amount from the defendant No. 1 notwithstanding the temporary statutory protection available to the defendant Nos. 2 and 3. In support of such contention, he has relied upon ***AIR 1999 Cal 781 (Amrita Lal Ghose vs. Narain Chandra Chakrabarti and Others)*** and ***AIR 1964 Cal 196 (Union of India v. East Bengal River Steamer Service Ltd.)***.

**15.** Learned Senior Advocate appearing for the respondent has contended that, the Appeal Court has the power to modify the decree. He has contended that, on the date when the

impugned judgment and decree was passed, there was no impediment of filing the suit and obtaining a decree as against the defendant No. 1. Therefore, the Appeal Court can exercise powers under Order XLI Rule 33 of the Code of Civil Procedure, 1908 and modify the decree to restrict it against the defendant No. 1 only. In support of such contention, he has relied upon **1969 volume 1 Supreme Court Cases 913 (Giani Ram & Ors. Vs. Ranjilal & Ors.)**.

**16.** With regard to the maintainability of the suit, learned Senior Advocate appearing for the respondent has contended that, the plaint cannot be rejected. The plaint has disclosed a valid and subsisting cause of action against the defendant No. 1. According to him, there is no legal impediment on the suit proceeding against the defendant No. 1 against whom a cause of action has been disclosed. He has contended that, the plaint is not liable to be rejected in its entirety merely because it may be unsustainable against some of the defendants. In support of such contention he has relied upon **1994 SCC OnLine Cal 105 (Nandalal N. Verma & Co. Ltd. v. Alliance Mills (Leasee) Pvt. Ltd)** and **2018 Volume 11 Supreme Court Cases 780 (Sejal Glass Limited Vs. Navilan Merchants Pvt. Ltd.)** and **1961 SCC OnLine Cal 98 (P.B.**

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Corporation of Calcutta & Ors.)***

**17.** Learned Senior Advocate appearing for the respondent has referred to the amendment introduced to Section 96 of the Insolvency and Bankruptcy Code, 2016. He has referred to the report of the Select Committee on the Insolvency and Bankruptcy Code (Amendment) Bill, 2025. He has contended that, Sub-Section (4) was introduced to Section 96 of the Insolvency and Bankruptcy Code, 2016, in order to prevent misuse of the insolvency process by guarantors who filed applications under Section 95 merely to delay or obstruct legitimate recovery proceedings.

**18.** Respondent had filed a suit for recovery of money against the appellants claiming that they were jointly and severally liable for the money lent and advanced by the respondent to the appellant No. 1 on December 12, 2022.

**19.** Proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016, had been filed as against the appellant Nos. 2 and 3 who are the defendant Nos. 2 and 3 in the suit before the NCLT. By an order dated September 22, 2021 NCLT had rejected those proceedings. The creditor had filed an appeal to the NCLAT against such order of dismissal.

NCLAT by an order dated May 27, 2022 had allowed such appeal.

**20.** In view of the order dated May 27, 2022 passed by the NCLAT, setting aside the order dismissing the proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016, the same got revived. The respondent had filed the suit on December 12, 2022. NCLT had admitted the proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016 on June 5, 2024. Therefore, between the period May 27, 2022 which is the date of the order of the NCLAT and June 5, 2024 when NCLT admitted the petition under Section 95, there was a moratorium in operation under Section 96 of the Insolvency and Bankruptcy Code, 2016.

**21.** Section 96 of the Insolvency and Bankruptcy Code is as follows:-

*“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) 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.*

*(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.”*

**22.** Sub Section (1) of Section 96 has prescribed a moratorium for a fixed period. The moratorium prescribed is to commence on the date of the application under Section 94 or 95, as the case may be and terminate on the date of admission of such application. Moratorium prescribed under Section 96 is therefore governed by two events occurring. Moratorium comes into operation with one of the events occurring, that is filing of a petition under Sections 94 and 95 and ceases to have effect on the other event occurring, that is, admission or rejection of such petition.

**23.** There is one more aspect to Sub-Section (1)(a) of Section 96 of the Insolvency and Bankruptcy Code, 2016. The

prescribed moratorium is in relation to all the debts. Clause (b) of Sub-Section (1) of Section 96 has two parts. For suits or proceedings pending prior to the filing of the proceedings under Section 94 or 95 of the Insolvency and Bankruptcy Code, 2016, Section 96(1)(b)(i) prescribes stay while 96(1)(b)(ii) prohibits new filing for recovery within the period of the moratorium prescribed in Section 96(1)(b)(ii).

**24.** In both aspects of stay of pending proceedings and embargo on new filings for recovery, the crucial element is the debt of the person against whom the petition under Section 94 or 95 was filed. Section 3(11) of the Insolvency and Bankruptcy Code, 2016 defines 'debt' 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. The definition of 'debt' in Section 3 applies to both Parts which regulates the insolvency proceedings for reorganisation and insolvency resolution of corporate debtors as well as to proceedings for insolvency resolution and bankruptcy for individual and partnership firms.

**25. V. Ramakrishnan and Another (supra)** has considered the Insolvency and Bankruptcy Code, 2016 and particularly the moratorium under Section 14 thereof. At the

time of such judgment, Part III of the Insolvency and Bankruptcy Code, 2016 did not come into operation. Nonetheless, it has compared Section 14 and Sections 96 and 101 for the interpretation of Section 14, even though Sections 96 and 101 had not been brought into force. It has held that, Sections 96 and 101 when contrasted with Section 14 would show, Section 14 cannot possibly apply to personal guarantor. It has noted that interim moratorium under Part III is a separate moratorium applicable separately in the case of personal guarantor against whom insolvency resolution processes may be initiated under Part III. Moreover, the protection of the moratorium under Section 96 and 101 are far greater than that of Section 14 in as much as, pending legal proceedings in respect of a debt and not the debtor are stayed.

**26. *Laxmi Pat Surana (supra)*** has considered the issue as to whether an action under Section 7 of the Insolvency and Bankruptcy Code, 2016 can be initiated by the financial creditor against the corporate person concerning a guarantee offered by it in respect of a loan account of the principal borrower, who had committed default and not a corporate person within the meaning of the Insolvency and Bankruptcy

Code, 2016. It has answered such issue by holding that, liability of a guarantor is coextensive as that of a principal borrower. Moreover, the remedy under Section 7 of the Insolvency and Bankruptcy Code, 2016 is not for recovery of the amount of the debt but for reorganisation and insolvency resolution of the corporate debtor who is not in a position to pay its debt and commits default in that regard.

**27. *Laxmi Pat Surana (supra)*** has held that, in law the status of the guarantor, who is a corporate person metamorphoses into corporate debtor, the moment principal borrower regardless of not being a corporate person committed default in payment of debt which had become due and payable. It has held that, in such scenario an action under Section 7 of the Insolvency and Bankruptcy Code, 2016 can be initiated.

**28. *Axis Trustee Services Ltd. (supra)*** has considered the issue as to whether or not two pending suits can be proceeded against the defendants in view of the applications filed under Section 95 of the Insolvency and Bankruptcy Code, 2016. It has answered such issue by holding that, since, the proceedings under Section 95 of the Insolvency and

Bankruptcy Code, 2016 were filed subsequent to the suits being filed, the suits were required to be stayed.

**29. *IL & FS Financial Services Limited (supra)*** has considered the issue of stay of suit in the facts of that case. A suit for recovery of money lent and advanced was filed in which, the defendant no. 1 was a corporate entity while the two defendants were natural persons. In such suit, apart from the principal debtor, there were three guarantors out of which one was a corporate entity while two others were natural persons. In respect of the corporate entity guarantor the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 came into effect. In respect of the natural persons, two applications under Section 95 of the Insolvency and Bankruptcy Code, 2016 were filed subsequent to the filing of the suit. In such factual matrix, it has held that, the suit shall remain stayed against the guarantors namely the corporate entity as it was under moratorium under Section 14 and the two natural persons as they enjoyed the benefits under Section 96 of the Insolvency and Bankruptcy Code, 2016.

**30.** In both ***Axis Trustee Services Ltd. (supra)*** and ***IL & FS Financial Services Limited (supra)*** the suits were

pending before Court prior to the institution of proceedings under the Insolvency and Bankruptcy Code, 2016. In the facts and circumstances of the present case, the institution of the suit in which, the impugned judgment and decree was passed, was subsequent to atleast two of the appellants enjoying the moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016. Therefore, these two authorities do not answer the question as to whether or not, the suit in which the impugned judgment and decree was passed, was capable of being filed before the Court or received by the learned Court not.

**31. *Black's Law Dictionary Ninth Edition*** has dwelt on joint and several liabilities. It has observed that liability that may be apportioned either among two or more parties or to only one or a few select members of the group at the adversary's discretion can be called joint and several liability. It has observed that, each liable party is individually responsible for the entire obligations, but a paying party may have a right of contribution and indemnity from the non-paying parties.

**32. *Amrita Lal Ghose (supra)*** has considered the issue of joint and several liabilities in the context of insolvency of one

of the parties in a suit for recovery of rent. It has held that, the suit can be decreed as against the solvent tenants since, it is of no consequence that one of the defendants is insolvent. Such insolvency will not affect the obligations of the other defendants to pay the rent, if they were otherwise liable.

**33.** The issue of joint and several liabilities has been considered in the ***The East India Bengal River Steamer Service Ltd (supra)*** It has held that, in case of joint liability it is permissible to bring the suit against one of the parties subject to that joint liability.

**34.** In the factual matrix obtaining in the present case, the issue is not of joint and several liability of the defendants to the suit per se. What has to be considered is, whether the suit was maintainable at the time when it was filed in view of Section 96 of the Insolvency and Bankruptcy Code, 2016 or not.

**35.** ***Giani Ram and Others (supra)*** has considered the power of Order XLI Rule 33 of the Code of Civil Procedure, 1908. It has held that, the Appellate Court has the power to pass the decree or order which the Subordinate Court ought to have passed but did not pass.

**36. *Sejal Glass Limited (supra)* and *P.B. Shah & Co. and Ors. (supra)*** are authorities on Order VII Rule 11(a) of the Code of Civil Procedure, 1908. In other words, they have considered whether in the factual matrix obtaining in those two cases, the plaint disclosed any cause of action against all the defendants or not. ***Sejal Glass Limited (supra)*** has noticed that, if conditions mentioned in Order VII Rule 11 are fulfilled the entire plaint has to be rejected. However, where it appears that the plaint cannot be proceeded with some parts but it can be proceeded against another part, Order VII Rule 11 has no application.

**37.** In the facts and circumstances of the present case, the issue is whether the suit when instituted was barred by law or not. The appellants have raised the issue under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 and not Order VII Rule 11 (a) thereof.

**38. *Venkatesh Vincom Private Limited (supra)*** has considered the issue of a commercial dispute. In the factual matrix obtaining in that case, it has held that, a suit for recovery of money lent and advanced by a non-banking financial company against the partnership firm, was

maintainable as it involves a commercial dispute within the meaning of the Act of 2015.

**39. *Dilip B. Jiwarajka (supra)*** has considered the challenge to the constitutional validity of Section 95 to 100 of the Insolvency and Bankruptcy Code, 2016. It has upheld the constitutional validity of such provisions.

**40.** The subsequent amendments to Section 96 of the Insolvency and Bankruptcy Code, 2016, by the Insolvency and Bankruptcy (Amendment) Act, 2026 does not help the respondents herein. By the Amendment Act, 2026, Sub-Section (4) was introduced to Section 96. It has been introduced after a notice was taken of the mischief that, the natural person were indulging into by reason of the moratorium prescribed under Section 96 of the Insolvency and Bankruptcy Code, 2016. Section 96(4) of the Insolvency and Bankruptcy Code, 2016 came into effect on and from May 26, 2026. Since, such provisions have come into force subsequent to the filing of the suit, we are not in a position to adjudicate upon the rival contention on the application of Section 96(4) of the Insolvency and Bankruptcy Code, 2016 to the factual matrix of the present case.

**41.** As has been noticed above, when the suit was filed the interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 was in operation. The suit filed by the respondents therefore, is governed by Section 96(1)(b)(ii). On the date of the filing therefore, respondent could not have filed such suit nor could the Court have received such suit, so filed by the respondent, in view of the embargo under Section 96(1)(b)(ii) of the Insolvency and Bankruptcy Code, 2016. Therefore, learned Judge has erred in passing a decree in a suit which could not have been filed before it and it could not have received it validly.

**42.** The plea that, the plaint should be dissected between the defendant no. 1 and the other defendants cannot be accepted since, when the suit was filed, it was one plaint. It is not a case of the plaint not disclosing a cause of action against some of the defendants. No knowledge of the pendency of proceeding under the Insolvency and Bankruptcy Code, 2016 so far as the respondent is concerned, is of no consequence since, the embargo is one of statute. Once the embargo is drawn to the attention of the Court, such Court has to take notice of the same and deal with the suit in accordance with the provisions of Section 96 of the Insolvency

and Bankruptcy Code, 2016. In other words, if the suit is required to be stayed an order of stay should be passed. If Section 96(1)(b)(ii) of the Insolvency and Bankruptcy Code, 2016 gets attracted then the suit is required to be dealt with under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 and be dismissed.

**43.** A part of the plaint cannot be rejected. It is not a question of adjudicating on the joint and several liabilities since, the suit itself could not have been received for adjudication for such effort to be made. On the parity of the same reasoning, dissection of the plaint between defendants cannot be done.

**44.** Since we have held that the suit could not have been filed due to the embargo under Section 96(1)(b)(ii) of the Insolvency and Bankruptcy Code, 2016 operating we refrain from discussing whether or not the subject matter of the suit involved a commercial dispute within the meaning of the Act of 2015.

**45.** In view of the discussions above, the impugned judgment and decree cannot be sustained. The same is set aside.

**46.** AD COM 3 of 2026 along with GA COM 2 of 2026 are disposed of without any order as to costs.

**[DEBANGSU BASAK, J.]**

**47.** I agree.

**[MD. SHABBAR RASHIDI, J.]**