

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.20649 OF 2023

Between:

M/s Vamshi Rubber Limited

... Petitioner

And

Union of India & others

... Respondents

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

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M/s Vamshi Rubber Limited

... **Petitioner**

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... **Respondents**

< **Gist:**

> **Head Note:**

! Counsel for the Petitioner : Mr B.Ravi Kiran Singh

^ Counsel for the Respondent No.1: Dy Solicitor General of India

^ Counsel for the Respondent No.2: Mr V.Subba Rao

^ Counsel for the Respondent No.3: Amir Bavani

? **Cases Referred:**

- (1) 2021 (6) SCC 771
- (2) 1998 (8) SCC 1
- (3) 2021 SCC online 801

HON'BLE MRS JUSTICE SUREPALLI NANDA**WRIT PETITION No.20649 OF 2023****ORDER:**

Heard Sri B. Ravi Kiran Singh, the learned counsel appearing on behalf of the Petitioner, Mr Gadi Praveen Kumar, learned Deputy Solicitor General of India appearing on behalf of respondent No.1, Sri Subba Rao Vadrevu, learned standing counsel appearing on behalf of Respondent No.2 and Sri Amir Bavani, learned standing counsel appearing on behalf of Respondent No.3.

2. **The petitioner approached the court seeking prayer as under:**

"declaring that the action of the Respondent No 2 in recording debt information given by Respondent No 3 vide Unique Debt Identifier: "AAACI1384C_1090" in Form C dated 29.12.2022 against the petitioner showing him as a guarantor for the debt availed by the principal borrower for an amount of Rs. 1235 lakhs without authentication of the default as contemplated under Regulation 21 of The Insolvency and Bankruptcy Board of India (Information Utilities) Regulations 2017 or without even issuing a notice to the petitioner herein as arbitrary unlawful violative of principles of natural justice violative of the provisions of the IB Code 2016, violative of the provisions of the

Companies Act 2013, against the established legal principals and violative of Article 14 R/w 300 A and consequently direct the Respondent No. 2 to deregister the said entry vide Unique Debt Identifier AAAC11384C_1090 dated 29.12.2022 in its register maintained under the statute".

3. PERUSED THE RECORD :

A. The Counter affidavit filed by Respondent No.2, and in particular, paras 10, 11, 12, and 16, read as under :

"10. The salient features of a Union Government Company or a Government Company as provided under the provisions of Companies Act, 2013 are:

- a) 51% or more of the total share-capital must be held by the Government,
- b) That the company should be created by an executive decision of the Government, without seeking the approval of the parliament or the State Legislature.
- c) being in the position of majority share capital, the Government has the authority to appoint majority of directors, on the Board of Directors of the Company.
- d) An annual report of the company is to be placed before the Parliament or the State Legislature.
- e) the Government company has public accountability.

11. It is submitted that in the present case, respondent No.2 is not a Union Government company as it does not adhere to any of the above stated requirements. In the case of Zee Telefilms v. UOI, the Hon'ble SC also stated

that, "While considering the aspect of the argument of the Petitioner, it should be borne in mind that the State/ Union has not chosen the Board to perform these duties nor has it legally authorised the Board to carry out these functions under any law or agreement. It has chosen to leave the activities of cricket to be controlled by private bodies out of such bodies' own volition (self-arrogated). **In such circumstances when the actions of the Board are not actions by an authorised representative of the State, can it be said that the Board is discharging State functions? The answer is No.**"

12. It is submitted that by applying the above judgment, it can be understood that Respondent No. 2 is not enacted by way of any Legislation. The Respondent No. 2 are incorporated under the Companies Act, 2013 as a Public Limited Company to perform functions outlined in the Insolvency and Bankruptcy Board of India (Information Utility) Regulations, 2016. They have chosen to discharge functions in the nature of an information utility. Further, the Respondent No. 2 company do not have any administrative committee as required for a Government Company nor are they under the control of the Central Government. **Therefore, the actions of Respondents No. 2 are not authorised by the State to undertake any functions that they already discharge. Hence, they are not discharging any functions of the State and are therefore, not State.**

16. **The Respondent No. 2 humbly submits that the Hon'ble High Court does not have the jurisdiction as**

the Respondent No. 2 Company is incorporated under the Companies Act, 2013, the Petitioner has not exhausted his statutory remedies available under different statutes. Therefore, he has approached the Hon'ble Court without exploring possible appropriate remedies.

B. The counter affidavit filed on behalf of Respondent No.3, and in particular, paras 2, 5, 9, 10, 11, read as under:

"2. It is submitted that, the M/s Vamshi Industries Ltd. ('Principal Borrower') was provided with financial assistance of Rs. 1150.00 Lakhs sanctioned by the Answering Respondent on 20.03.1999 (annexed as Exhibit P-6 at page no. 145 of the Writ Petition) for setting up a 4 MW Biomass based Power Generation Plant at Vemulapalli Village, Mandapet Mandal, East Godavari District, in the state of Andhra Pradesh. Accordingly, loan agreement was executed on 18.06.1999. Further additional loan of Rs. 85.00 Lakhs was sanctioned on 06.08.1999 (annexed as Exhibit P-6 at page no.157 of the Writ Petition) and an additional loan agreement was executed on 14.10.1999. It is imperative to state herein that in both the loan agreements, the Principal Borrower has very categorically stated that Corporate Guarantee is provided by M/s Vamshi Rubber Ltd. i.e., the Petitioner herein. Copy of the Loan Agreement and additional loan agreement dated 18.06.1999 and 14.10.1999 respectively are annexed herewith and marked as Annexure R-3.(Colly)

5. It is submitted that the Petitioner on 12.11.1999 passed a board resolution wherein, the Petitioner agreed to pledge their shareholdings held in the Principal Borrower Company in favour of the Answering Respondent. It is further submitted that, the Answering Respondent time and again approved the reschedulement of the loan, requested by the Principal Borrower as well as the Petitioner herein vide letters dated 30.09.2002 and 30.09.2005. It is pertinent to state herein that the Petitioner is well aware of the reschedulement of the loan and the same is specifically mentioned in the minutes of the board meeting held on 04.10.2002. It is certain to state herein that Answering Respondent vide letter dated 02.09.2003, has acceded to the request made by the Principal Borrower for reduction in rate of interest on the loan provided under the pre-payment policy, the said letter is acknowledged by the Principal Borrower as well as by all the personal guarantors and the Petitioner. Thereby, the said Board Resolutions and the acknowledgment in the letter, is itself sufficient to showcase that the Petitioner was well informed about the charge. Copy of minutes of board resolutions dated 12.11.1999, 04.10.2002, reschedulement letters dated 30.09.2002 & 30.09.2005 and letter dated 02.09.2003 are annexed herewith and marked as ANNEXURE R-6 (Colly.).

9. At this juncture, it is relevant to state herein that the Deed of Guarantee dated 26.07.1999 as well as 14.10.1999 specifically mentions that in any event of default on part of the Borrower in payment/repayment of any of the monies, the Guarantor shall upon 'demand' by

the Answering Respondent has to pay without demur, all the amounts which shall become due and payable by the Borrower under the Agreement. Further, it is imperative to state herein that the Petitioner herein in the capacity of the Guarantor has unconditionally, absolutely and irrevocably guaranteed to the disbursements made by the Answering Respondent herein. **The relevant portion of the guarantee deed is reproduced herein as below:**

3. In the event of any default on the part of the Borrower in payment/repayment of any of the monies referred to above, or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the Agreement which constitute an event of default in term thereof, the Guarantor shall upon demand by IREDA forthwith pay to IREDA without demur all the amounts which shall become due and payable by the Borrower under the Agreement.

7. This Guarantee shall be enforceable against the Guarantor notwithstanding that any security or securities executed by the Borrower in favour of IREDA shall at the time when the proceedings are taken against the Guarantor on this Guarantee, be outstanding or unrealised or lost.

10. The rights of IREDA against the Guarantor shall remain in full force and effect notwithstanding any arrangement which may be reached between the

IREDA and other Guarantor, if any, or notwithstanding the release of the other or others from liability and notwithstanding that at any time hereafter the other Guarantor (s) may cease for any reason whatsoever to be liable to IREDA, IREDA shall be at liberty to require the performance by the Guarantor of its obligations hereunder to the same extent in all times been solely liable to perform the said obligations.

11. To give effect to this guarantee, IREDA may act as if the Guarantor was the principal debtors to IREDA.

15. This Guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with IREDA by the Borrower and shall be valid and binding on the Guarantor and the operative until repayment in full of all monies due to IREDA under the Loan Agreement.

16. This Guarantee shall be irrevocable and the obligations of the Guarantor hereunder shall not be conditional on the receipt of any prior notice by the Guarantor or by the Borrower and the demand or notice by IREDA, as provided in Clause 20 hereof shall be sufficient notice to or demand on the Guarantor.

19. The liability of the Guarantor hereunder shall not exceed the sum of Rs. 1150.00 lakhs (Rupees Eleven Crores and Fifty Lakhs only) plus all interest, additional interest, costs, charges, and other monies payable by the Borrower to IREDA under the Loan Agreement."

Therefore, it is evident that the Answering Respondent is well within the limitation period and the Corporate Guarantor/Petitioner has willingly failed to abide by the terms and conditions of the Guarantee Deed. Thus, it is certain that the Petitioner herein only to circumvent its obligations and delay the proceedings of IBC, has approached this Hon'ble Court with unclean hands.

10. It is noteworthy that, after such recall the Principal Borrower in the year 2017, 2018, 2019 and 2022 submitted several OTS proposals and the same were revised on several occasions. It is humbly submitted that, in an OTS proposal dated 03.06.2022, the Principal Borrower has explicitly mentioned about the Corporate Guarantee. However, none of the OTS made to the table of approval as the Principal Borrower every now and then failed to submit certain relevant documents as sought by the Answering Respondent in context to the said OTS proposals. At this instance, it is pertinent to state herein that it is a settled law and has been systematically clarified by the Supreme Court in the matter of 'Laxmi Pat Surana v. Union of India & Anr. [Civil Appeal No.2734 of 2020]', that the liability of the Corporate Guarantor is coextensive

with that of the Principal Borrower, and it gets triggered the moment the Principal Borrower commits default in paying the debt when it had become due and payable. The liability of the Corporate Guarantor also triggers when the Principal Borrowers acknowledges its liability in writing within the expiration of prescribed period of limitation, to pay such outstanding dues and fails to pay the acknowledged debt. Further, the Hon'ble Apex Court emphasising on application of Section 18 of the Limitation, also specifically stated that a fresh period of limitation is required to be computed from the time when the acknowledgment was so signed by the Principal Borrower or the Corporate Guarantor, provided the acknowledgment is before the expiration of the prescribed period of limitation. Therefore, it is evident from the above chain of events that the liability of the Principal Borrower and Petitioner goes hand in hand. Copy of last OTS proposal dated 03.06.2022 is annexed herewith and marked as ANNEXURE R-9.

11. It is humbly submitted that the Answering Respondent observed from the Annual Report of the Petitioner Company that the Petitioner has failed to disclose the information with respect to the Corporate Guarantee provided to the Answering Respondent and accordingly the same was informed to the Principal Borrower vide an email dated 24.08.2022, wherein the Answering Respondent has further stated that the said issue shall be brought in notice of SEBI, Auditors and Independent Directors. Furthermore,

on 27.08.2022, the Answering Respondent vide a letter, informed the Auditors of the Petitioner i.e., M/s CSVN Associates about the non-disclosure of the vital information of Corporate Guarantee in the annual reports of the Petitioner. However, to the reasons best known to the Petitioner, they have portrayed to have been unaware of the Corporate Guarantee. Thereby the aim and intent of not acknowledging the guarantee by the Petitioner reeks of malafide. Copy of the email dated 24.08.2022 and letter dated 27.08.2022 are annexed herewith as ANNEXURE R-10 (Collv.).

4. The case of the Petitioner in brief as per the averments made in the affidavit filed by the Petitioner in support of the present writ petition is as under :

a) It is the case of the petitioner that, the petitioner is a listed company registered under the name of M/s. Vamshi Rubber Limited. The 3rd respondent herein claims that the petitioner herein has obtained credit facilities to the tune of Rs. 1150 lakhs vide sanction letter dated 20.03.1999 for which the petitioner company stood as a guarantee through "deed of guarantee" dated 26.07.1999.

b) Further, the 3rd respondent claims that there is another advance of Rs. 85 lakhs to the petitioner company vide sanction letter dated 06.08.1999 and subsequently, the said loan taken

by the petitioner company is classified as NPA on 29.12.2005 and has approached the DRT-I at New Delhi vide O.A. No. 256 of 2016 for the recovery. However, the petitioner company was not shown as a party in the said O.A. limiting the recovery of the claim to the principal borrower and personal guarantees.

c) Subsequently, the 3rd respondent had filed an amendment cum implead petition vide I.A. No. 1465 of 2017 in order to add the petitioner company as a party, claiming as a corporate guarantor in the above said pending O.A vide 256 of 2016. However, the said debt neither reflected in annual financial documents of the company, books of the company, ROC records, nor anywhere else.

d) It is the specific case of the petitioner that, the 3rd respondent has also initiated proceedings u/s. 7 of IB Code 2016 against the petitioner herein vide C.P (IB)-39/7/HDB/2023 claiming the recovery of the debt from the petitioner herein. However, the said debt is not reported to the registries established by the 1st respondent under special enactments like SARFAESI ACT 2002 or IB Code 2016 etc., until December 2022. However, the petition in above said proceedings C.P (IB)-39/7/HDB/2023 filed by the 3rd respondent discloses by way of

Annexure A-32 dated 29.12.2022 that the 2nd respondent created a record of financial information in form- C vide unique debt identifier AAACI1384C_1090 in its register at the instance of 3rd respondent against the petitioner prior to the filing the said company petition under IB code before the NCLT-1, Hyderabad.

e) It is further submitted that, according to the 3rd Respondent, all the outgoing directors were absolved from the liability of personal guarantees to the said debt and the new incoming directors were made as personal guarantors to the said debt, however, is silent about corporate guarantee. The said time barred debt, if at all was secured by corporate guarantee of the petitioner company as claimed by the 3rd respondent the acknowledgment of debt at every stage is mandatory, however, there is no such record of acknowledgment of debt appears to be available with the 3rd Respondent. More so, for a period of 20 years the said debt is not seen in any statutory annual statements which clearly indicate that the alleged corporate guarantee does not exist.

f) Therefore, the statutory record created in the register maintained by the 2nd respondent is completely unlawful and in violation of procedure contemplated under, The Insolvency and

Bankruptcy Board of India (Information Utilities) Regulations 2017. Further, the information provided by the 3rd respondent to the 2nd respondent was neither informed to the petitioner nor the default is authenticated before recording the said information. Hence, aggrieved by the proceeding initiated of the 3rd respondent vide Unique Debt Identifier: AAACI1384C_1090 in Form- C dated 29.12.2022 against the petitioner, the present Writ Petition is filed.

5. DISCUSSION AND CONCLUSION:

a) **As per Regulation 28 of IBBI (IU) Regulations 2017 “An information utility shall hold a information as a custodian” and hence the Respondent No.2 is obligated to rely on the information submitted to it by the creditor and undertake the authentication process, record the status of authentication of default and issue the record of default as per Regulation 21 of the IBBI (IU) Regulations, 2017.**

b) **A bare perusal of the averments made in the counter affidavit filed by the 2nd Respondent clearly indicates that the Respondent No.2 undertook the process of verification and authentication of default, post which the status of authentication of the information of default was recorded**

by the Respondent No.2 as “Deemed to be Authenticated” as per Regulation 21(3) of the IBBI (IU) Regulations 2017, since the details of the Petitioner as guarantor were not furnished by the Respondent No.3 when the information was submitted to Respondent No.2 in Form C, the Respondent No.2 could not send any request for authentication or the reminders to the petitioner.

c) This Court opines that the Respondent No.2 had solely performed its statutory obligations in recording the information of default submitted by the Respondent No.3 and in issuing the record of default. Hence the plea of the Petitioner that the 2nd Respondent ought not to have recorded the said default in Form-C is rejected.

d) Rule 20(1)(A) of Insolvency and Bankruptcy Board of India (Information Utilities) Regulations 2017 ('IU Regulations') vide Notification No.IBBI/2022-23-GN/REG085, dated 14.06.2022 specifically states as under :

“20. Acceptance and receipt of information :

(1A) Before filing an application to initiate corporate insolvency resolution process under section 7 or 9, as the case may be, the creditor shall file the information of default, with the information utility

and the information utility shall process the information for the purpose of issuing record of default in accordance with regulation 21..."

6. This Court opines that the 3rd Respondent only complied with the above referred Rule and had duly obtained the certificate that is Form-C as well as Form-D from Respondent No.2 which well recognizes the corporate guarantee of the Petitioner as one of the securities of the principal borrower.

7. This Court opines that there is no illegality in the action of the Respondent No. 2 in according debt information given by Respondent No.3 vide Unique Debt Identifier "AAACI1348C_1090" in Form-C dated 29.12.2022 against the Petitioner showing the Petitioner as guarantor for the debt availed by the principal borrower for an amount of Rs.1235 lakhs. The specific grievance of the Petitioner that the Petitioner was not put on notice by the 2nd Respondent is answered and explained in the counter filed by the 2nd Respondent that since the details of the Petitioner as a guarantor had not been furnished by Respondent No.3 when the information was submitted to Respondent No.2 in Form-C, the

Respondent No.2 could not send any request for authentication or the reminders to the Petitioner.

8. A bare perusal of the averments made in the counter affidavit filed by the 3rd Respondent indicate a specific stand of the 3rd Respondent that only to wriggle out of the obligation as a Corporate guarantor and to stall the company petition proceedings ongoing before the National Company Law of Tribunal, Hyderabad Bench, the Petitioner approached the Court by filing the present writ petition with frivolous grounds.

9. Respondent Nos.2 and 3 filed detailed objections in so far as maintainability of the present writ petition is concerned, this Court opines that in view of the fact as borne on record that Respondent No.2 is a Corporate entity registered under the provisions of Companies Act, 2013 duly managed by the directions of the Constituted Board of Directors, who are appointed by the shareholders of the company, and the 2nd Respondent not being enacted by way of any legislation and the 2nd Respondent being incorporated under the Companies Act, 2013 as a Public Limited Company to perform functions outlined in

the Insolvency and Bankruptcy Board of India (Information Utility) Regulations, 2016, is neither under the control of the Central Government nor the State Government.

10. As per the observations of the Apex Court in judgment dated 20.04.2021 reported in (2021) 6 SCC 771 in M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh, which referred to Whirlpool Corporation Vs. Registrar of Trade Marks reported in (1998) 8 SCC 1 and the said view had been reiterated in a recent full bench judgment reported in 2021 SCC Online SC 801 in "Magadh Sugar & Energy Ltd. Vs. State of Bihar and others", the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy had been summarized in the said Judgment at para 28 and the same is extracted hereunder:

"28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an

effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

This Court opines that Clause (ii) and (v) of the judgment of the Apex Court (referred to above) applies to the facts of the present case.

11. Taking into consideration the averments made in the counter affidavit filed by the 2nd and 3rd Respondents (referred to and extracted above) and the terms of the Guarantee deed, dated 26.07.1999 (referred to and extracted above) as well as dated 14.10.1999 which clearly indicate that the petitioner herein the capacity of the Guarantor had unconditionally, absolutely and irrevocably guaranteed to the disbursements made by the Answering Respondent herein, this Court opines that the Petitioner is not entitled for the relief as prayed for in the present writ petition and the writ petition is dismissed since the same is devoid of merits.

12. In view of the fact that the Petitioner has effective statutory remedies available under different statutes for addressing the grievances put-forth in the present writ petition, it is open to the Petitioner to avail the statutory remedies available under different statutes for the grievances as put-forth by the Petitioner in the present writ petition and the concerned authorities may deal with the same uninfluenced by the observations made by this Court in the present writ petition.

Miscellaneous petitions, if any, pending, shall stand closed.

SUREPALLI NANDA,J

Date: 03.06.2024

Note: L.R.Copy to be marked
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