

Bank of Baroda Vs. Farooq Ali Khan & Ors.

Civil Appeal No. 2759/2025 arising out of SLP (C) No. 18062 of 2024 · Supreme Court of India · 2025-02-20 · Pamidighantam Sri Narasimha · Manoj Misra · F2J-C-1537

Full judgment text

Bank of Baroda Vs. Farooq Ali Khan & Ors.

[Civil Appeal No. 2759/2025 arising out of SLP (C) No. 18062 of 2024]

Pamidighantam Sri Narasimha, J.

1. Leave granted.

2. The question for our consideration is whether the High Court could have justifiably invoked judicial review under Article 226 of the Constitution to interdict personal insolvency proceedings initiated against respondent no.1 under Section 95 of the Insolvency and Bankruptcy Code, 2016¹ by holding that his liability as a debtor has been waived.

The High Court jurisdiction was invoked against the order of the Adjudicating Authority dated 16.02.2024 appointing a resolution professional and directing him to examine the application under Section 95 and file a report under Section 99 of the IBC. Having considered the facts, legal submissions, and for the reasons to follow, we set aside the judgment and order passed by the High Court and restore the proceedings before the Adjudicatory Authority from the time of its order dated 16.02.2024 directing the resolution professional to submit a report as provided under Section 99 of the IBC.

3. The relevant facts are that respondent no. 1 was a promoter and director of one Associate Décor Limited². While corporate insolvency resolution proceeding³ has been initiated against the corporate debtor as well, this is not the subject matter of the present appeal, which is restricted to the personal insolvency proceedings against respondent no. 1. Commencing from 2010, the corporate debtor took various loans from the appellant and respondent nos. 3 and 4, who are a consortium of banks.

Respondent no. 1 entered into a deed of guarantee for securing these loans on 10.07.2014. Due to default in payments by the corporate debtor, and after initiation of CIRP against it, the appellant issued a demand notice dated 11.08.2020 and invoked the deed of personal guarantee calling upon respondent no. 1 and other guarantors to pay an amount of Rs. 244 crores. However, by letter dated 14.12.2020, respondent no. 1 and other guarantors offered Rs. 25 crores as full and final settlement.

4. After issuing a Demand Notice in Form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019⁴ on 22.02.2021, the appellant filed an application under Section 95(1) of the IBC read with Rule 7(2) of the Rules to initiate personal insolvency proceedings against respondent no. 1.

5. The Adjudicating Authority, by order dated 16.02.2024, appointed a resolution professional and directed him to examine the application and submit his report as provided in Section 99 of the IBC for approval or rejection of the application. On objections raised by respondent no. 1 on limitation and the validity and existence of the personal guarantee, the Adjudicating Authority, relying on the judgment of this Court in *Dilip B. Jiwrajka v. Union of India*⁵, stated that "the issue/objections raised by the Ld. Counsel for the Personal Guarantor will be considered after the submission of the report by the Resolution Professional and response of the Personal Guarantor on the same".

6. Respondent no. 1 preferred a writ petition before the High Court under Article 226 of the Constitution to prohibit the Adjudicating Authority from entertaining the personal insolvency petition against him, primarily on the ground that his liability as a personal guarantor stood waived and discharged. The High Court, vide the order impugned before us, allowed the writ petition and held that the personal insolvency proceedings are not maintainable as respondent no. 1's liability as a guarantor had stood waived.

In order to arrive at this finding, the High Court examined various documents pertaining to the guarantee and the loans. It further held that this Court in *Jiwrajka* (supra) was not considering an application that was not maintainable before the Adjudicating Authority, and thereby distinguished the same. Pursuant to the impugned order passed by the High Court, the Adjudicating Authority disposed of the insolvency proceedings against respondent no. 1 by order dated 19.06.2024.

7. We have heard Mr. Tushar Mehta, learned Solicitor General for the appellant and Mr. Shyam Mehta, learned senior counsel for respondent no. 1 in detail.

8. The simple question for our consideration is whether the High Court correctly exercised its writ jurisdiction to interdict the personal insolvency proceedings under the IBC against respondent no. 1. It is necessary to appreciate the statutory scheme regarding the admission of an application for initiating personal insolvency under Part III, Chapter III of the IBC. This Court in *Jiwrajka* (supra), while deciding the constitutional validity of Sections 95 to 100, has delved into the same and has held as follows. Pursuant to an application for initiating personal insolvency proceedings under Section 94 or Section 95, the Adjudicating Authority appoints a resolution professional under Section 97.

The resolution professional performs distinct functions under Part II (dealing with corporate insolvencies) and Part III (dealing with personal insolvencies) of the IBC.⁶ Under Part III, Chapter III, the resolution professional performs a facilitative role of collating information, as provided under Section 99 of the IBC, in which the resolution professional examines the application, determines whether the debt has been repaid, and submits a report to the Adjudicating Authority recommending the admission or rejection of the application.⁷ It is only after the submission of this report that the Adjudicating Authority's adjudicatory functions commence under Section 100. At this stage, the Adjudicating Authority determines whether to admit or reject the application for initiating insolvency.⁸ These principles have been summarized as follows:

"86.1. No judicial adjudication is involved at the stages envisaged in Section 95 to Section 99 IBC;

86.3. The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining "jurisdictional facts" at the stage when it appoints a resolution professional under Section 97(5) IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;

86.6. No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100."

9. The Adjudicating Authority, by its order dated 16.02.2024, has followed the procedure envisaged under Sections 95 to 100 of the IBC, and has also relied on the afore-stated principles in *Jiwrajka* (supra). It specifically observed that respondent no. 1's objections regarding limitation and waiver of the guarantee will be considered once the resolution professional submits his report. This is the correct approach as the appointment of a resolution professional, at the very threshold, is statutorily mandated under Section 97 of the IBC.

As has been held by this Court in *Jiwrajka* (supra), the Adjudicating Authority does not adjudicate any point at this stage and need not decide jurisdictional questions regarding existence of the debt before appointing the resolution professional.⁹ This is because Section 99 requires the resolution professional to, at the first instance, gather information and evidence regarding repayment of the debt, and ascertain whether the application satisfies the requirements of Section 94 or Section 95 of the IBC. The existence of the debt will first be examined by the resolution professional in his report, and will then be judicially examined by the Adjudicating Authority when it decides whether to admit or reject the application under Section 100.¹⁰

10. In light of this statutory scheme, which has been followed by the Adjudicating Authority, we are of the view that the High Court incorrectly exercised its writ jurisdiction as: first, it precluded the statutory mechanism and procedure under the IBC from taking its course, and second, to do so, the High Court arrived at a finding regarding the existence of the debt, which is a mixed question of law and fact that is within the domain of the Adjudicating Authority under Section 100 of the IBC.¹¹

11. It is well-settled that when statutory tribunals are constituted to adjudicate and determine certain questions of law and fact, the High Courts do not substitute themselves as the decision-making authority while exercising judicial review.¹² In the present case, the proceedings had not even reached the stage where the Adjudicatory Authority was required to make such determination. Rather, the High Court exercised jurisdiction even prior to the submission of the resolution professional's report, thereby precluding the Adjudicating Authority from performing its adjudicatory function under the IBC.

12. While there is no exclusion of power of judicial review of High Courts, and the limits and restraint that the constitutional court exercises and must exercise are well articulated¹³, the primary issues involved in the present case, including the factual determination of whether the debt exists, is part of the statutory and regulatory regime of the Insolvency and Bankruptcy Code. In fact, the entire rationale behind appointing a resolution professional under Section 97 is to facilitate this determination by the Adjudicating Authority.

The High Court ought not to have interdicted the proceedings under the statute and assumed what it did while exercising jurisdiction under Article 226 of the Constitution.¹⁴ In this view of the matter, we are of the opinion that the High Court was not justified in allowing respondent no. 1's writ petition. The High Court should have permitted the statutory process through the resolution professional and the Adjudicating Authority to take its course.

13. In *Mohammed Enterprises (Tanzania) Ltd v. Farooq Ali Khan*,¹⁵ while setting aside the judgment of the same High Court interfering with the CIRP proceedings against the same corporate debtor, we expressed the same principle in the following terms:

"15. High Court should have noted that Insolvency and Bankruptcy Code is a complete code in itself, having sufficient checks and balances, remedial avenues and appeals. Adherence of protocols and procedures maintains legal discipline and preserves the balance between the need for order and the quest for justice. The supervisory and judicial review powers vested in High Courts represent critical constitutional safeguards, yet their exercise demands rigorous scrutiny and judicious application. This is certainly not a case for the High Court to interdict CIRP proceedings under the Insolvency and Bankruptcy Code."

14. In view of the above reasons, we allow the present appeal and set aside the impugned order dated 28.05.2024 by the Karnataka High Court in Writ Petition No. 6288/2024 (GM-RES). Consequently, the appellant's application in C.P.(IB) No. 139/BB/2022 is restored to the record of the National Company Law Tribunal, Bengaluru, and it shall proceed from the stage of passing of the order dated 16.02.2024. Considering the fact that the matter has been pending since 2021, we request the Tribunal to decide the same as expeditiously as possible.

15. No order as to costs.

16. Pending applications, if any, disposed of.

.....J. [Pamidighantam Sri Narasimha]

.....J. [Manoj Misra]

New Delhi;

February 20, 2025.

1 Hereinafter 'IBC'.

2 Hereinafter 'corporate debtor'.

3 Hereinafter 'CIRP'.

4 Hereinafter 'Rules'.

5 (2024) 5 SCC 435.

6 *Jiwrajka* (supra), para 50.

7 *Ibid*, paras 54 and 55.

8 *ibid*, paras 60 and 74.

9 *ibid*, paras 72, 86.1 and 86.3.

10 *ibid*, para 74.

11 *ibid*.

12 Thansingh Nathmal v. Superintendent of Taxes, Dhubri, AIR 1964 SC 1419, para 7; United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110, paras 43, 45; Commissioner of Income Tax v. Chhabil Dass Agarwal, (2014) 1 SCC 603, para 15; South Indian Bank Ltd v. Naveen Mathew Philip, 2023 SCC OnLine SC 435, para 14.

13 Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1, para 15; Harbanslal Sahnia v. Indian Oil Corporation Ltd, (2003) 2 SCC 107, para 7.

14 See Union of India v. V.N. Singh, (2010) 5 SCC 579; Executive Engineer Southern Electricity Supply Company of Orissa Ltd. v. Seetaram Rice Mill, (2012) 2 SCC 108, para 80; Radha Krishan Industries v. State of Himachal Pradesh, (2021) 6 SCC 771, para 27.6.

15 2025 SCC OnLine SC 23.

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