
UV Asset Reconstruction company Ltd. v. Electrosteel Casting Ltd.

Citation: 2026 INSC 14

Facts of the case

In this case, the court heard 2 appeals together, namely 1st appeal-(Civil Appeal No. 9701 of 2024) & 2nd appeal-(CIVIL APPEAL No. 12367 of 2025)

The case was an appeal against a NCLAT order dated 24.01.2024, which affirmed the order of Adjudicating Authority (NCLT) passed on 24.06.2022. SREI had provided ESL with financial assistance of 500 crores, securities provided under the sanction letter were a promissory note and a post-dated cheque. There was no personal or corporate guarantee for the debt from ECL's side. ECL was a promoter of ESL and had undertaken to arrange for infusion of funds under the letter under clause (d)(3) of the loan agreement. SREI, the original creditor has assigned all its rights and interest in favour of UV Asset Reconstruction Company Limited. Further, on the same day, an addendum was attached to the sanction letter that providing for an additional security for the facility in the form of subservient charge over movable and project assets of ESL.

Furthermore, ECL executed a Deed of undertaking on 27.07.2011, whereby it undertook a limited obligation to arrange for infusion of funds into ESL. Clause 2.2 provided that ECL shall arrange for infusion as may be necessary to enable ESL to comply with stipulated financial covenants. On 21.11.2011, ESL, ECL and SREI entered into a supplementary agreement amending inter alia the facility agreement and the security package for the facility.

Subsequently, Vedanta acquired ESL for 12,710.14 crores, with 5320 being in cash, transferred to an escrow account which forms the sustainable debt. The remaining 7399.13 crores, were paid through the issue of 739,91,32005 fully paid-up equity shares of 10 each. In this SREI received INR 241.71 crores in cash and equity shares worth INR 336.19, crores in lieu of its total admitted claim of INR 577.90 crores. For which in response, Vedanta granted a "No dues certificate". But later, claimed lesser amount than agreed was received and brought a "Deed of Assignment".

Issue before the Court

1. 1st appeal-(Civil Appeal No. 9701 of 2024):

Whether the clause 2.2 of the Deed of undertaking dated 27.07.2011, constitutes a contract of guarantee as construed under section 126 of the Indian Contract Act,1872.

2. 2nd appeal-(CIVIL APPEAL No. 12367 of 2025)

Whether the resolution plan extinguished the debt, so as to bar any claims against ECL as service provider/promoter.

Procedural history- NCLT denied the guarantee and said the resolution plan extinguished all claims on conversion. The NCLAT held that there was no guarantee and that the resolution plan only extinguished the debt of ESL and not claim against 3rd parties due to existence of

clause 3.2(ix) in the resolution plan. But as first criteria of being guarantor was not met, the claim was dismissed.

Argument

Appellant's argument

1st appeal- (Civil Appeal No. 9701 of 2024)

Clause 2.2 involves a 2 step process of discharging liability of guarantor (ECL in this case) .(i) to fund ESL for such amounts. (ii) to eliminate the breach of default on part of the borrower. Further, was argued that it is a “See to it” type of guarantee. They relied on the judgements of to argue the same.¹

Moreover, ECL had admitted its status as a guarantor in the pleadings before the Madras High Court and this Court and is therefore, estopped from taking a contrary stand². Further, ECL made a payment of 38 crores to SREI which reinforces the existence of a guarantee.

2nd appeal-(CIVIL APPEAL No. 12367 of 2025)

Clause 3.2 of the resolution plan has no application as the debt is already extinguished. Any form of future capital reduction does not re-instate past debt. The consolidation of equity shares happened 8 days later and was independent of this appeal. Thus, there was no haircut or dimension suffered by the respondent. The NCLAT judgement in *Ushdev International Ltd.* is *per incuriam* and contrary to the supreme court judgement in *Lalit Kumar Jain*. Therefore, the appeal should be allowed.

Respondent's argument

1st appeal- (Civil Appeal No. 9701 of 2024)

Clause 2.2 of the deed, only imposes an obligation to arrange for transfer of funds and not a guarantee under section 126 of ICA. To argue the same, they use the following Indian cases³. Further, the “see to it” type of guarantee as argued by the appellant is not envisaged under section 126 of the ICA.

Further, ECL made a payment of 38 crores to SREI under its own violation in its capacity as a promoter and not a contractual obligation. ECL's obligation is limited to the mortgage security and the not the same as personal guarantee.

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¹ *Moschi vs. Lep Air Services Ltd.*: 2 WLR 1175 (per Lord Diplock), *Associated British Courts vs. Ferryways* [2009] EWCA Civ. 189 and *Shanghai Shipyard Co. Ltd. vs. Reignwood International Investment (Group) Co. Ltd.*: [2021] EWCA Civ. 1147 .

² 3CSD No. 18692 of 2019 and Order dated 05.11.2019 passed by Division Bench of Madras High Court. , Judgment dated 26.11.2021 in Civil Appeal No. 6669 of 2021, *Mumbai International Airport Pvt. Ltd. vs. Golden Chariot Airport and Ors.* (2010) 10 SCC 422 (Para 43-50) and *Nagindas Ramdas vs. Dalpatram Ichharam and Ors.* (1974) 1 SCC 242 (para 27).

³ *Yes Bank Limited v. Zee Entertainment Enterprises Limited and Ors.*, 2020 SCC OnLine Bom 11763 (Paras 50,53,59,62,67), *United Breweries (Holding) Ltd. v. Karnataka State Industrial Investment, Development Corporation Ltd. and Others*, 2011 SCC OnLine Kar 4012 (para 6,9) and *Aditya Birla Finance Ltd. vs. Siti Networks*, 2023 SCC OnLine Del 1290 (Para 26,237,238).

The resolution plan does not discharge 3rd parties from their liability under the Deed. Clause 3.2 of the deed preserves the right to claim against any 3rd party. Further, the company had taken a substantial haircut in the unsustainable part of the debt which was converted to equity shares.

Judgement

1st appeal- (Civil Appeal No. 9701 of 2024)

For existence of a guarantee there is a requirement of the specific undertaking or an unambiguous affirmation. In contract law, technical rules are not blanketly applied but intention and understanding among the parties is paramount. Firstly, there is no record or undertaking of the form of a guarantee. Secondly, the agreement is purely a promise to assist in payment and not an obligation under the creditor to pay. Therefore, there is no obligation of ECL as guarantor under section 126 of the ICA. Further use of cases of *Mumbai International Airport Pvt. Ltd. vs. Golden Chariot Airport and Ors.* (2010) 10 SCC 422 (Para 43-50) and *Nagindas Ramdas vs. Dalpatram Ichharam and Ors.* (1974) 1 SCC 242 (para 27) is misconceived in this case.

Thereby, the court concurs with the judgment of the NCLAT and holds that the clause 2.2 of the 'Deed of undertaking' does not lead to creation of a guarantee under Section 126 of the ICA.

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The total acknowledged debt is 13,395.25 crores. Sustainable part of it paid in cash is 5320 crores. With 7619.24 crores being the unsustainable debt that was converted to equity shares. SREI was allotted 33,61,85,524 shares of 10 each on 06.06.2018, after reduction and consolidation they only received 67,23,710 shares of INR 10 each. Therefore, the Resolution Plan did not provide the financial creditors, including SREI, with the full value of unsustainable debt of ESL. Further, Clause 3.2 (ix) of the Resolution Plan unequivocally provides that rights against any third party, including a security provider/existing promotor in relation to any portion of unsustainable debt, secured or guaranteed by such third parties, will not be extinguished. Further, approval of a Resolution Plan does not ipso facto discharge a security provider of her or his liabilities under the contract of security.

Therefore, it is held that the resolution plan does not extinguish the debt and any claim against the ECL as a security provider/third-party surety is sustained.

Conclusion

In conclusion, UV ARC's application under section 7 of IBC, to declare ECL as guarantor under section 126 of ICA is dismissed. Further, in second appeal, ECL's remains liable as a service provider (mortgagor), for the unsustainable part of the debt. But this liability does not extend to the level of guarantor.