

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO

CIVIL REVISION PETITION.NO.1270 OF 2023

Dated: 6th FEBRUARY, 2026

BETWEEN :

1. Kalyani Refineries Limited, rep. by its Managing Director, V.V.S. Ram Narsimha Rao, S/o.VV Subba Rao, Aged about 47 years, R/o.F-208, Metro Residency, Raj Bhavan Road, Hyderabad and Others.

**... Petitioners-
Petitioners-Judgment Debtors**

AND

1. Margadarsi Chit Fund Limited, Office at 5-10-195, Fatehmaindan Road, Opp: Police Control Room, Hyderabad, Branch at Ameerpet, Hyderabad, Rep. by its Managing Director, Ch.Sailaja, W/o. Ch.Kiran

**...Respondent
Respondent-Decree Holder**

2. V.V.Rama Narayan Rao, S/o.V.V.Ram Narasimha Rao, Aged about 64 years old, D.No.D-347, Majestic Mansion Begumpet, Hyderabad and Others.

**...Respondents
Petitioners-Judgment Debtors**

ORDER

1. This Memorandum of Civil Revision Petition is filed under Section 115 of Civil Procedure Code, 1908 (for short 'CPC')

assailing the order passed by the learned XXVI Additional Chief Judge, City Civil Court at Hyderabad in EA.No.2 of 2016 and EP No.10 of 2005, dated 02.02.2023.

2. Petitioner Nos.1 to 3 are petitioner Nos.1, 3 and 4. Respondent Nos.2 to 4 are petitioner Nos.2, 5 and 6 and respondent No.1 is the respondent-Decree Holder (for short 'DHR') in EA No.2 of 2016 in EP No.10 of 2005. Petitioner Nos.1 to 3 are the Judgment Debtors (for short 'JDR') Nos.1, 4 and 7 and respondent Nos.2 to 4 are JDR Nos.3, 5 and 6 in EP No.10 of 2005.

3.1. Petitioners along with respondent Nos.2 to 4 have filed EA.No.2 of 2016 under Section 47 of CPC against the respondent No.1- DHR to dismiss the E.P. as in executable. [P]
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3.2. Petitioner No.2-V.V.S.Ram Narsimha Rao has sworn the affidavit on his behalf and on behalf of other petitioners in EA.No.2 of 2016.

3.3. It is stated in the affidavit that petitioner No.1-JDR No.1 was ordered to be wind up by the High Court of Andhra Pradesh in Company Petition No.215 of 1998, dated 30.09.1999 which was confirmed by the Division Bench of the High Court. An application was moved by petitioner No.1-petitioner No.1-JDR No.1 before the

High Court under Section 391 of the Companies Act, 1956, seeking an arrangement with the unsecured creditors with a view to revive the operations of the company. Company agreed to pay an amount of Rs.1,36,77,467/- to all the unsecured creditors *vide* Company Petition No.70 of 2002. The High Court was pleased to approve and sanction the scheme on 09.10.2002 after ascertaining the wishes of all the parties concerned. In accordance with the sanctioned scheme, petitioner No.1-petitioner No.1-JDR No.1 paid all the unsecured creditors except the respondent No.1-respondent-DHR. Respondent No.1-respondent-DHR being unsecured creditor is bound by the scheme sanctioned by the High Court and is only entitled for the amounts as provided in the scheme. All the unsecured creditors are entitled only for principal outstanding as on 30.09.1999 i.e., Rs.4,06,321/-. Once the scheme is sanctioned, civil and criminal proceedings initiated by the unsecured creditors should be withdrawn. As per Section 391 (2) of the Companies Act, a majority in number representing $\frac{3}{4}$ th in value of creditors or class of creditors or members or class of members as the case may be, present and voting either in person or where proxies are allowed at the meeting. Petitioner No.1-petitioner No.1-JDR No.1 became Sick Industrial Company as defined under the provisions of Sick Industrial Companies (Special

Provisions) Act, 1985 (for short 'SICA') and the reference is numbered as Case No.321 of 2004. The Board for Industrial and Financial Reconstruction (for short 'BIFR') has intimated the company about the same on 28.10.2004. In view of the pendency of the reference made before the BIFR, no execution proceedings can be initiated against the petitioner No.1-petitioner No.1-JDR No.1 or against the guarantors without obtaining prior permission as provided under Section 22 of SICA scheme. Respondent No.1-respondent-DHR is estopped from claiming the decree amount.

4. Respondent No.1-respondent-DHR filed counter and contended that the petitioners did not place any material to show that petitioner No.1-petitioner No.1-JDR No.1 has complied with the terms and conditions imposed in Company Petition No.70 of 2002 and the company was directed to pay certain amounts to the respondent No.1-respondent-DHR as early as in the month of October, 2002, having failed to do so, petitioner No.1-petitioner No.1-JDR No.1 cannot take advantage of the order passed in Company Petition No.70 of 2002, dated 09.10.2002. The liability under the decree passed in OS.No.494 of 1999 is jointly and severally, even if petitioner No.1-petitioner No.1-JDR No.1 succeeded in getting orders in C.P.No.70 of 2022, the benefit will be available only to the petitioner No.1 company but not for other

petitioners. Section 22 of SICA is concerned, the protection or the legal bar contemplated therein is available to the sick company but not to the Directors and Guarantors such as petitioner Nos.2 and 3, respondent Nos.2 to 4 herein. BIFR proceedings are of the year 2004 and the petitioners have failed to place on record the latest status of the case pendency of the proceedings and prayed to dismiss the same.

5. The learned trial Court after going through the material on record has dismissed the petition without costs.

6. Learned counsel for the petitioners-petitioner Nos.1, 3 and 4 submits that the learned trial Court erred in dismissing EA No.2 of 2016 in EP No.10 of 2005 which is wrong on facts and law. Petitioner No.1 has filed affidavit on 19.11.2004 which shows the status report before the High Court of Andhra Pradesh stating that the company has paid an amount of Rs.94,63,638/- to 23 unsecured creditors out of total 30 unsecured creditors and the company could not pay some of the unsecured creditors as they did not withdraw the pending cases against the company or they themselves were declared insolvent. Respondent No.1-respondent-DHR has accepted the Demand Draft No.115557 dated 03.06.2017 for Rs.4,06,321/- without any protest and the claim is discharged

as per Section 391 of the Companies Act. The learned trial Court erred in holding that the order passed by the High Court in C.P. No.70 of 2002 is only available to the company and not to the other petitioners who are guarantors. As per Section 134 of the Indian Contract Act, 1872, which provides that the surety is discharged by any contract between the creditor and the principal debtor by which the principal debtor is released. The learned trial Court has not considered the arguments put forth by the petitioners and the documents filed thereon. The trial Court failed to appreciate that BIFR proceedings are pending, no proceedings including execution proceedings could be initiated against the petitioners, respondent Nos.2 to 4 without obtaining prior permission of BIFR as provided under section 22 of SICA. Counsel to substantiate his contention has relied on the decisions in the cases of (1) S.K. Gupta and Others Vs. K.P. Jain and Others¹, (2) Kundanmal Dabriwala Vs. Haryana Financial Corporation and Others².

7. Learned counsel for respondent No.1 submits that the learned trial Court has rightly appreciated the facts of the case and rightly dismissed the application filed by the petitioners. Respondent No.1-respondent-DHR is not a party to the Company

¹ MANU/SC/0043/1979

² MANU/PH/3320/2011

Petition and as per the orders of the Company Court, dated 09.10.2002 in Company Application No.70 of 2002, petitioner No.1-petitioner No.1-JDR No.1 has not cleared the payments. Counsel to substantiate his contention has relied on the decisions in the cases of (1) Kailash Nath Agarwal and Others Vs. Pradeshiya Industrial & Investment Corporation of U.P. Ltd. and Another³, (2) Ram Kishun and Others Vs. State of Uttar Pradesh and Others⁴, (3) M.G.Brothers Finance Ltd., Yemmiganuru Vs. J.Badrinath and Others⁵.

8. Learned counsel for the petitioners has filed written submissions, synopsis in support of his contentions.

9. Heard learned counsel on record, perused the material.

10. Now the point for consideration is: Whether the order passed by the learned trial Court suffers from any perversity or illegality? If so, does it require interference of this Court?

11. Power of the High Court under Article 227 of the Constitution of India is to be sparingly exercised in cases where errors are apparent on the face of the record or exercising its

³ (2003) 4 SCC 305

⁴ (2012) 11 SCC 511

⁵ 2007 (1) ALD 451

jurisdiction in a perverse manner : See K.Valarmathi and Others Vs. Kumaresan (2025 SCC OnLine SC 985).

12. Respondent No.1-respondent-DHR has filed suit in OS No.494 of 1999 on 14.10.1999, the same was numbered on 30.10.1999. The prayer in the suit is to pass a decree in favour of plaintiff (respondent No.1 herein) and against defendant Nos.1 to 7 therein (petitioners, respondent Nos.2 to 4 herein) for a sum of Rs.11,65,754/- jointly and severally with interest @ 12% per annum from the date of filing the suit till realization. Defendant Nos.3 and 5 there in (respondent No.2-petitioner No.2-defendant No.3, respondent No.3-petitioner No.5-defendant No.5 have contested the suit). During pendency of the suit, suit against defendant No.2-V.V. Satya Dev was dismissed as not pressed on 14.07.2004. Suit filed by respondent No.1-respondent-DHR is decreed on 30.06.2003 against the contesting defendants i.e., petitioner Nos.1 to 3, respondent Nos.2 to 4.

13. Respondent No.1-respondent-DHR has filed EP No.10 of 2005 for a sum of Rs.20,08,076/- to be executed against JDR No.1 (petitioner No.1 herein). JDR No.3 (respondent No.2 herein), JDR No.4 (petitioner No.2 herein), JDR No.5 (respondent No.3 herein),

JDR No.6 (respondent No.4 herein), JDR No.7 (petitioner No.3 herein) to attach the movable properties.

14.1. Petitioner No.1-petitioner No.1-JDR No.1 has filed Company Petition No.70 of 2002 before the High Court of Judicature of Andhra Pradesh at Hyderabad and the High court has set aside the winding up order, dated 30.09.1999 passed in C.P.No.215 of 1998 and permitted the petitioner therein (petitioner No.1 herein) to restart the operations of the company as per the scheme of arrangement approved by the shareholders and unsecured creditors of the company. The petitioner (petitioner No.1 herein) shall file monthly reports. The first of such report shall be filed on 11.12.2002, to which day, the Company Petition stands posted. The order of the High Court is dated 09.10.2002. [P]
SEP]

14.2. In internal page 10 of the order dated 09.10.2002 in Company Application No.70 of 2002, it is mentioned that "according to the scheme of arrangement, the respondent-company as on 30.09.1999 owes an amount of Rs.1,36,72,467/- being the aggregate of the principal amount borrowed by it from various unsecured creditors. The respondent company proposes to go for a one time settlement and pay the dues in 24 equal monthly

installments starting from 01.10.2002 and terminating on 01.09.2004, which shall not carry any interest”.

15. As per the scheme of arrangement, petitioner No.1-petitioner No.1-JDR No.1 has to pay the dues in 24 equal monthly installments starting from 01.10.2002 and terminating on 01.09.2004. It is to be noted here that the dues owned by the company is only mentioned in lump sum, there is no bifurcation of the amounts to be paid to the unsecured creditors.

16. As per the order in Company Application No.70 of 2002, dated 09.10.2002 the first report shall be filed on 11.12.2002. Petitioner No.2-petitioner No.3-JDR No.4 has filed his affidavit in Company Petition No.70 of 2002 on 19.11.2004 i.e., almost after two years of passing of the order in Company Application No.70 of 2002, dated 09.10.2002. It is mentioned in the affidavit at para No.4 that “Accordingly, the company has paid an amount of Rs.94,63,638/- to 23 unsecured creditors out of a total of 30 unsecured creditors. It is submitted that the company could not pay some of the unsecured creditors as they did not withdraw the pending cases against the company or as they themselves were declared insolvent. The details of payments made by the company to various creditors are enclosed hereto”. On perusal of the sheet

enclosed to the affidavit which goes to show that no amount is paid to respondent No.1-respondent-DHR i.e., Rs.4,06,321/-. In the balance outstanding column as on 31.10.2004 says that the company filed OS No.494 of 1999 in the Court of XIII Additional Chief Judge, City Civil Court and has not withdrawn as per the scheme of arrangement. It is to be noted here that the affidavit filed by petitioner No.2-petitioner No.3-JDR No.4 has also not given any bifurcation of the amounts paid to the secured creditors.

17. EA.No.2 of 2016 came to be filed in the month of February, 2016 i.e., after 12 years of filing the affidavit in Company Petition No.70 of 2002, dated 19.11.2004. The contention of the petitioners in the grounds of Appeal is that the respondent No.1-respondent-DHR has not obtained prior permission from BIFR as provided under Section 22 of SICA, in the absence of specific permission from BIFR authorizing the decree holder to proceed with the execution proceedings is not maintainable. In the affidavit in para 8 of the EA No.2 of 2016, petitioner No.2 stated therein that BIFR proceedings were dismissed and Appeal has been filed, pending AIFR proceedings till 2014. Petitioners have not filed any material to show that against the dismissal of BIFR proceedings they have preferred an Appeal which is pending till 2014.

18. Learned counsel for the petitioners submits that D.D. for Rs.4,06,321/-, dated 03.06.2017 is paid to respondent No.1-respondent-DHR and which has been encashed on 30.08.2017 without any protest. By the date of filing EA No.2 of 2016 no payment is made by the petitioner No.1-petitioner No.1-JDR No.1, the D.D. is dated 03.06.2017. As per the Company Application order dated 09.10.2002 *vide* CA No.70 of 2002, the petitioner No.1-petitioner No.1-JDR No.1 has to settle the dues of unsecured creditors in 24 equal monthly installments starting from 01.10.2002 and terminating on 01.09.2004. The said time frame is not complied by the petitioner No.1-petitioner No.1-JDR No.1 and it cannot be said that the petitioner No.1 has cleared the principal amount to the respondent No.1-respondent-DHR. Even the affidavit filed by petitioner No.2-petitioner No.3-JDR No.4 in Company Application No.70 of 2002, dated 19.07.2004 is silent with regard to the payments if any made to the respondent No.1-respondent-DHR. Except stating that the respondent No.1-respondent-DHR has not withdrawn the suit. The Payment made by the petitioner No.1-petitioner No.1-JDR No.1 is on 03.06.2017 to the respondent No.1-respondent DHR which is after 13 years of filing the affidavit in company petition No.70 of 2002, dated 19.11.2004.

19.1. Section 391 envisages a compromise or arrangement being proposed for consideration by members and/or creditors of a Company liable to be wound up under the Companies Act, 1956. Compromise or arrangement has to be between creditors and/or members of the Company and the Company, as the case may be. It was always open to the Company to offer a compromise to any of the creditors or enter into arrangement with each of the members. The scheme in this case is essentially a compromise between the company and its unsecured creditors. The scheme when sanctioned does not merely operate as an agreement between the parties but has statutory force and is binding not only on the company but even dissenting creditors or members, as the case may be. The effect of the sanctioned scheme is "to supply by recourse to the procedure thereby prescribed the absence of that individual agreement by every member of the class to be bound by the scheme which would otherwise be necessary to give it validity" (see J.K. (Bombay) Pvt. Ltd., v. New Kaiser-I-Hind Spg. & Wvg. Co. Ltd. and Ors. etc. MANU/SC/0217/1968 : [1969]2SCR866, which is referred in S.K. Gupta¹.

19.2. In Kundanmal Dabriwala², the High Court of Punjab and Haryana at Chandigarh held that "Principal debtor's liability in terms of scheme of arrangement sanctioned by this Court on

19.03.2009, such scheme is binding on all the creditors including non consenting creditors such as the corporation. Under Section 135 of the Act, a contract between the creditor and the principal debtor by which the creditor compounds with the principal debtor, discharges the surety. It shall include a binding arrangement sanctioned by the Court under Section 391 of the Companies Act. It is a case of a deemed and binding contract though by operation of law, but such contract extinguishes the liability of the principal debtor. With such extinction of the liability of the principal debtor, the surety cannot recover the amount of debt paid, from the debtor. Therefore, it cannot be said that the surety will continue to be liable for payment of the debt due to the creditor prior to the settlement”.

20. The contention of the petitioner's counsel is that they have paid the principal amount due to the respondent No.1-respondent-DHR *vide* D.D. dated 03.06.2017 for Rs.4,06,321/- and it is encashed by respondent No.1-respondent-DHR on 30.08.2017, hence the amount is cleared as per the scheme of arrangement. Petitioner No.1-petitioner No.1-JDR No.1 has not complied with the scheme of arrangement i.e., one time settlement and payment of dues in 24 monthly installments starting from 01.10.2002 to 01.09.2004. Hence the payment made by the petitioner No.1-

petitioner No.1-JDR No.1 to respondent No.1-respondent-DHR cannot be said to be in consonance with the scheme of arrangement and it cannot be said that the liability of the principal debtor is extinguished and that the surety will continue and liable to pay the debt due to the creditor.

21.1. In Kailashnath Dagarwal³, the Supreme Court observed that “The clauses of the guarantees executed by the appellant in favour of The Pradeshiya Industrial and Investment Corporation of U.P. Ltd., (PICUP)³ clearly show that the liability of the guarantors was to remain unaffected by the failure of PICUP to enforce its mortgage and hypothecation against the assets of the Company. There is nothing in the contracts which can in any way be construed as contrary to the joint and several liability created under Section 128 of the Contract Act, 1872”.

21.2. The creditor has a right to obtain a decree against the surety and the principal debtor. The surety has no right to restrain execution of the decree against him until the creditor has exhausted his remedy against the principal debtor for the reason that it is the business of the surety/guarantor to see whether the principal debtor has paid or not. The surety does not have a right to dictate terms to the creditor as to how he should make the

recovery and pursue his remedies against the principal debtor at his instance : See Ram Kishun⁴.

21.3. When the law in force and the decree do not lay down any fetters on the right of the decree holder to proceed against any of the judgment-debtors for recovery of the amount due under the decree from any of the judgment-debtors of his choice, it is not for the Court to state what amount the decree holder should realize from which of the judgment-debtors under the decree. It is for the decree holder to decide what amount he should recover from which judgment-debtor : See M.G.Brothers Finance Ltd.⁵

22. Learned counsel for the petitioners submits that if the respondent No.1-respondent-DHR is having any grievance with regard to the scheme of arrangement, the amount allocated to it under the scheme, the proper and only Forum is before the High Court in Company Petition No.70 of 2002 and execution proceedings are not the appropriate Forum to challenge circumvent a scheme sanctioned by the High Court under Section 391 of the Companies Act. Petitioner No.1-petitioner No.1-JDR No.1 has not complied with the scheme of arrangement as stated in the order dated 09.10.2002 in Company Application No.70 of 2002. The non-compliance is also fortified with the affidavit filed in Company

Application No.70 of 2002 on 19.11.2004. It cannot be said that the respondent No.1-respondent-DHR cannot execute the decree in view of the fact that the petitioner No.1-petitioner No.1-JDR No.1 has not complied the orders passed in company application No.70 of 2002, dated 09.10.2002.

23. It cannot be said that petitioner No.1-petitioner No.1-JDR No.1 is discharged by paying the amount through D.D. and the contention of the petitioners' counsel that as the principal debtor is discharged, the guarantors are also discharged as per Section 134 of the Contract Act, 1972. The submission is not acceptable in view of the fact that petitioner No.1-petitioner No.1-JDR No.1 is not discharged as he failed to comply with the scheme of arrangements as per orders in Company Application No.70 of 2002, dated 09.10.2002.

24. The decisions cited by the petitioners' counsel stated supra at para Nos.19.1 and 19.2 are distinguishable from the facts of the present case and thus the ratio of those cases would not apply in the present case.

25. The decisions cited by the respondent No.1 counsel stated supra at para Nos.21.1 to 21.3 are applicable to the case on hand.

26. As the respondent No.1-respondent-DHR has encashed D.D. No.11557, dated 03.06.2007 for Rs.4,06,321/-, the said amount has to be adjusted in the E.P.

27. Petitioners have not made out any case to interfere with the orders passed by the learned trial Court, there are no merits in the CRP and the same is liable to be dismissed and is accordingly dismissed. ^[P] _{SEP}

28. CRP is dismissed without costs with observations as indicated in the order.

Interim Orders if any shall stands vacated. Miscellaneous application/s stands closed.

B.R.MADHUSUDHAN RAO, J

6th February, 2026.

PLV