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A No. 1409 of 2



Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.08.2026

PRONOUNCED ON : 16.10.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A No. 1409 of 2024

in

C.S(Comm.Div.)No.154 of 2020

M/s.Chaturvedi and Shah LLP,
Chartered Accountants,
A Partnership Firm,
Registered under the provisions of the
Indian Partnership Act, 1932,
Having office at 714-715, Tulsiani Chambers,
212, Nariman Point, Mumbai – 400 021.

..Applicant(s)

Vs

1. M/s.63 Moons Technologies Limited,
(Formerly known as Financial Technologies
(India) Ltd.,)
Represented by its Authorized Signatory
Mr.D.John Dheepak,
having its registered office at Sakthi Tower-1,
7th Floor, E-766, Anna Salai, Thousand Lights,
Chennai – 600 002.
2. M/s Wadhwan Global Capital Limited,
Ground Floor, Madhva Building, Near Family
Court, Bandra (East) Mumbai, Mumbai,
Mumbai – 400 051
Also at, 10th Floor, TCG Financial Center,
BKC Road, Mumbai – 400 098.
3. Kapil Rajesh Kumar Wadhwan
Former Chairman and Managing Director,
DHFL, at the relevant time, having office at
Warden House, 2nd Floor, Sir P M Road,
Fort, Mumbai – 400 001



residing at 22/23 Sea View Palace, Pali Hill,
Bandra (West), Mumbai – 400 050.

4. Dheeraj Rajeshkumar Wadhwan,
Former Director, DHFL, at the relevant time,
having office at Warden House, 2nd Floor, Sir P
M Road, Fort, Mumbai – 400 001
residing at 22/23 Sea View Palace,
Pali Hill, Bandra (West), Mumbai – 400 050.

5. Harshil Mehta
Former Chief Executive Officer,
DHFL, Having office at Warden House, 2nd
Floor, Sir PM Road, Fort, Mumbai – 400 001.

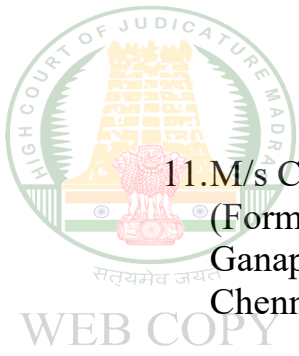
6. Santosh Sharma
Flat No.1801, 18th Floor,
Emerald Wing – 3,
Vasant Oasis Complex,
Borosil Plot,
Makhwana Road,
Marol Andheri East,
Mumbai – 400 059.

7. M/s. Care Rating Ltd.,
No.O-509/C, Spencer Plaza, 5th Floor, No.769,
Anna Salai, Chennai – 600 002.

8. M/s.Brickwork Ratings India Private Limited
2nd Floor, B Wing, Swelect House, No.5,
Sir P.S.Sivasamy Salai, Mylapore,
Chennai – 600 004.

9. M/s.T.R. Chadha And Co LLP,
5D, 5th Floor, Mount Chambers, 758,
Anna Salai, Chennai – 600 002.

- 10.M/s.Rajendra Neeti And Associates,
A partnership firm registered under the
provisions of the Indian Partnership Act, 1932
and having office at
144, Jolly Maker Chamber II, Nariman Point,
Mumbai – 400 021.



11.M/s Catalyst Trusteeship Limited
(Formerly GDA Trusteeship Limited)
Ganapathy Colony, III Street, Teynampet,
Chennai – 600 018.

..Respondent(s)

Judges Summons under Order XIV Rule 8 of O.S. Rules, read with Order VII Rule 11 of Code of Civil Procedure, 1908 and Section 151 C.P.C., praying to Reject the Plaint in C.S.(Comm.Div) No.154 of 2020 under Order VII Rule 11 of the Code of Civil Procedure, 1908.

For Applicant(s): Mr.Arvind Datar
Senior Counsel
For Mr.Anirudh Krishnan

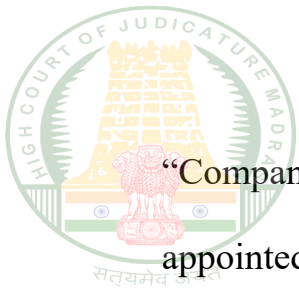
For Respondent(s): Mr.Nithyaesh Nataraj

ORDER

This application has been filed to reject the Plaint in C.S.(Comm.Div) No.154 of 2020 under Order VII Rule 11 of the Code of Civil Procedure, 1908.

2. Heard both sides.

3. Mr.Arvind Datar, learned Senior Counsel appearing for the applicant would submit that the present suit had been filed for recovery of a sum of Rs.231 Crores and 60 Lakhs, together with interest, claiming fraudulent activities on the part of various parties, including the applicant, which had led the first respondent/plaintiff to make investments in a company called Dewan Housing Finance Corporation Limited (DHFL) (hereinafter referred to as the



“Company”), by way of compensation. He would submit that the applicant was appointed as statutory auditor for the Company. On the basis of financial information given by the Company, the tranche prospectus was issued by the Company on the report given by the applicant.

4. He would submit that the IBC proceedings were initiated against the Company, in which an IRP was appointed, wherein the first respondent/plaintiff had also made a claim and was part of a Committee of Creditors pursuant to the resolution plan approved. The first respondent had also received a sum of Rs.96.83 Crores approximately and was further entitled to receive from any appropriate recoveries made in the IBC proceedings.

5. According to him, when proceedings had been initiated as against the Company under the IBC provisions before the NCLT, the attempt made by the first respondent/plaintiff in filing the instant suit for claiming monies as compensation payable to him due to the conduct of the applicant and other defendants, which had led the first respondent/plaintiff to make investments in the Company, is not maintainable. He would further submit that it has been admitted by the respondent/plaintiff that any amount that is recovered in the commercial suit that it had initiated against the Company or in any proceedings arising out of the IBC would be given credit. The quantification of the amount of compensation itself is an imaginary quantification and the attempt made by



the first respondent/plaintiff is only to harass the applicant by bringing down the goodwill and reputation that it had earned.

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6. That apart, he would submit that the first respondent/plaintiff, even if he succeeds in the present suit, cannot be allowed to get the benefits of the decree, as the cause of action that had arisen in the suit is based upon his investment in the Company and any decree granted in the suit would have to give benefit to the Committee of Creditors in the insolvency proceedings against the Company.

7. In that regard, he would submit that the present suit cannot be termed to be a relief in personam and the applicant could have raised the various issues in the proceedings in the IBC by taking out the necessary application and the attempt made by the applicant is only to hoodwink the process of IBC proceedings.

8. In that regard, he had relied upon the provisions of Sections 63, 231 and 238 of the IBC. Further, relying upon Section 66(1) of the IBC, he would submit that during the process, if it is found that the business of the Corporate Debtor had been carried on with an intention to defraud its creditors, then the NCLT, on an application by the Resolution Professional, pass an order that any person who had knowingly been a party to carrying on business in such a



manner shall also be liable for disgorgement of assets of the Corporate Debtor.

When that being so, he would submit that in an independent suit dehors the IBC proceedings, the plaintiff is attempting to deny the benefits to the entire Committee of Creditors. Hence, he would submit that the present suit is liable to be rejected and prays for appropriate orders.

9. Countering his arguments, Mr.Nithyaesh Nataraj, learned counsel appearing for the first respondent/plaintiff, would submit that the plaintiff has an independent cause of action as against the defendants, particularly the applicant herein. He would submit that the very same applicant had earlier taken out an application to reject the plaint in Application No.2786 of 2020 and the same had also been dismissed. When the Court had earlier held *prima facie* that the applicant, being the statutory auditor, owed a duty of care and for failure of such duty of care, the applicant is liable to be prosecuted. When that be so, the applicant cannot be permitted to again take out an application under Order VII Rule 11 by putting up a new set of facts. He would further submit that, as against the earlier rejection of the application for rejection of the plaint, intra-court appeals have also been filed and the same are pending.

10. In that regard, he would submit that the second application for the same relief is barred by the principles of constructive *res judicata*, apart from constituting an abuse of process of Court. Having failed to raise the ground that

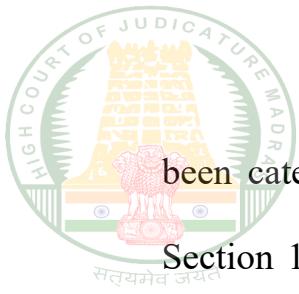


had been raised in the present application, the applicant is acquitted of filing a successive application, which would only show that the applicants are attempting to protract the proceedings, amounting to a clear abuse of process.

11. That apart, he would submit that when the earlier order, dismissing the application to reject the plaint had been challenged by the applicant and is pending before the Division Bench in an intra-court appeal, the present application is liable to be dismissed.

12. That apart, he would submit that the provision of Section 66 of the IBC is available only to the Resolution Professional or the Liquidator and cannot be invoked by the plaintiff.

13. Relying upon Section 35 of the Companies Act, he would submit that the plaintiff has a right to sue the applicant. The same has also been considered by a learned Single Judge of this Court in the earlier application filed by the applicant, as the plaintiff. As an individual investor, do not have a right to invoke the provisions of Section 66 of the IBC before the NCLT, the present suit, which would be governed by Section 35 of the Companies Act, would be maintainable. He would further refer to the judgment of the Division Bench of this Court while dealing with the revocation of leave, whereby the learned Single Judge's order revoking the leave was set aside and contend that it had

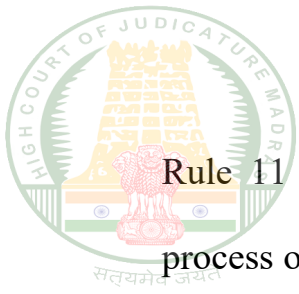


been categorically held by the Division Bench of the Court, while analysing Section 14 of the IBC had held that the present suit within the jurisdiction of this Court is also maintainable.

14. When already such a finding had been rendered, the present application is a wholly misconceived application, constituting an abuse of process of Court, and any order passed by this Court in rejecting the plaint would amount to judicial impropriety. Therefore, he prays this Court to dismiss the application.

15. I have considered the submissions made by the learned counsel appearing on either side and perused the materials available on record.

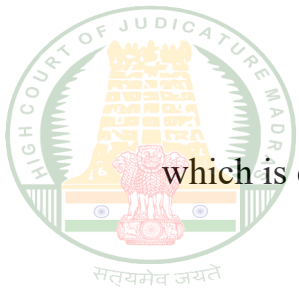
16. The present application had been taken out for rejecting the plaint, primordially on the ground that when the company for which the applicant had formulated a prospective investment had been subjected to insolvency proceedings and in which a scheme had been approved, in that regard, by application of Section 66 of the IBC, the Court would have to oust its jurisdiction, directing the plaintiff to approach the NCLT, as any relief that is granted to the plaintiff would only enure to the benefit of the Committee of Creditors. The said application had been objected to by the first respondent/plaintiff on the ground that successive applications under Order VII



Rule 11 could not be entertained, as it would only amount to an abuse of process of Court, apart from contending that the plaintiff, being an individual, is barred from invoking the provisions of Section 66 of the IBC.

17. A primordial contention had been raised on behalf of the plaintiff that, as a consequence of the proceedings before the NCLT, which had been taken up to the Hon'ble Apex Court in *Civil Appeal Nos.1632 to 1634 of 2024* in the case of *Piramal Capital and Housing Finance Limited (Formerly known as Dewan Housing Finance Corporation Limited) Vs. 63 Moons Technologies Limited and others*, reported in *2025 INSC 421*, wherein a categorical direction was issued with regard to the recovery made under the provisions of Sections 44, 48, 49, 50 and 66 of the Act. The recovery made under Sections 43, 45 and 50 would go to the Committee of Creditors, and the recovery made under Section 66 would have to go in favour of the successful Resolution Applicant. In that regard, it was his case that the recovery made under Section 66 would only go to the successful Resolution Applicant and not to the Committee of Creditors.

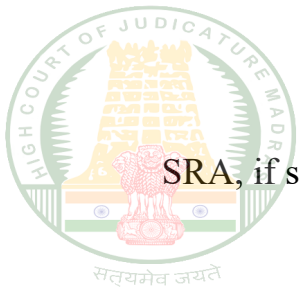
18. An analysis of the aforesaid judgment would indicate that the 77 financial creditors, who formed the Committee of Creditors had, in their wisdom, decided to give away the Section 66 recoveries in favour of the successful Resolution Applicant on a bargain in exchange for a lump sum resolution amount of INR.37,250 Crores. This is explicit in the said judgment,



which is extracted hereunder for better reference, particularly paragraph 74:

“74. When the Administrator / Resolution Professional filed an application being I.A.No.449 of 2021 (Plan Approval Application) before the NCLT seeking approval under Section 31 of IBC on 24.02.2021, the 63 Moons filed an I.A. being No.623 of 2021 on 05.03.2021, challenging the provisions of RP which provided that the Recoveries under Section 66 would go to the benefit of SRA. The NCLT vide order dated 07.06.2021 granted its approval to the Plan Approval Application filed by the Administrator, and by separate order dismissed the I.A.No.623 of 2021 filed by the 63 Moons, holding that the CoC comprising of 77 Financial Creditors had decided in its commercial wisdom to give away the Section 66 Recoveries to the SRA after a hard bargain in exchange of a lumpsum resolution amount of INR 37,250 Crores.”

19. An analysis of Section 66 of the IBC would only indicate that the amounts recovered under the said provision would go to the benefit of the Committee of Creditors. In the present case, it was only on the decision taken by the Committee of Creditors to give the benefit of the recovery under Section 66 to the successful Resolution Applicant, the Hon'ble Supreme Court had directed payment of recoveries made under Section 66 to the benefit of the successful Resolution Applicant, which it had noted to be on an exchange for a lump sum amount of INR 37,250 Crores. The contention of the first respondent/plaintiff, that the recovery under Section 66 would only benefit the



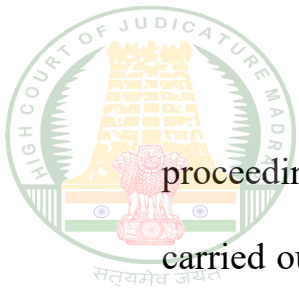
SRA, if such benefit is recovered under the Act, is wholly misconceived.

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20. It is further to be noted that the company under insolvency was also proceeded against under Section 66 of the IBC and certain recoveries were made from the persons, who were also responsible for such fraudulent activities. No reasons have been attributed by the first respondent/plaintiff as to why, when such proceedings under Section 66 of the Act were initiated, the applicant had not been proceeded with therein. The first respondent / plaintiff could have brought to the notice about the conduct of the applicant and sought for compensation through the IRP as it was a member of the Committee of Creditors (CoC).

21. If any fraudulent activity is made, as claimed under Section 35 of the Companies Act, 2013, it is true that the persons, who had suffered an injury by subscribing for securities of the company based upon such prospectus, as claimed by the first respondent/plaintiff, would be entitled to seek compensation from the persons liable to pay compensation which would enure to every such person who had sustained a loss and in that regard, the present suit as against the applicant, as a right in personam, would be available to the plaintiff.

22. On the other hand, when the company for which such a fraudulent prospectus is issued had been subjected to insolvency proceedings and in that

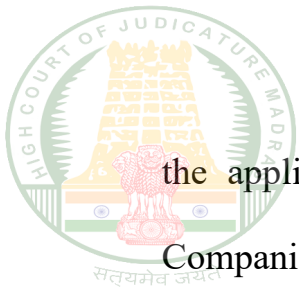


proceedings, if it is found that the business of the Corporate Debtor had been carried out with an intent to defraud the creditors, then the authority could pass an order against those persons who are knowingly parties to the carrying on of business in such a manner, making them liable to make such contributions to the assets of the Corporate Debtor, which would be available for distribution among the Committee of Creditors.

23. In such an event, the action for civil liability under Section 35 becomes an action in rem. When the suit had been instituted on a cause of action under Section 35 as against the applicant, insolvency proceedings had been initiated against a company to which the applicant had provided his services. Proceedings under Section 66 had been initiated against the persons responsible for such fraudulent activities by the Insolvency Professional, who also represents the Committee of Creditors.

24. By applying the principles as discussed supra, even though the first respondent/plaintiff's claim of civil liability as against the applicant is an action in personam, it can only be termed to be an action in rem in view that the fraudulent activities related to the creation of assets in the company, which has been subjected to insolvency proceedings.

25. In that regard, this Court is of the view that the present suit as against



the applicant, which relates to a cause of action under Section 35 of the Companies Act read with Section 66 of the IBC, cannot be adjudicated by this Court and the remedy available for the first respondent / plaintiff as against the applicant could only be a remedy under Section 66, as any recovery from the applicant for his fraudulent activities cannot be to the sole benefit of the first plaintiff, but can only be to the benefit of the entire Committee of Creditors in the IBC proceedings.

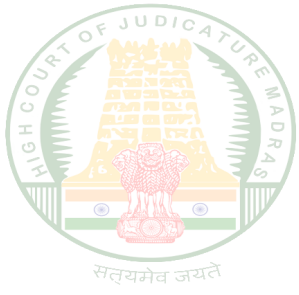
26. In that regard, the plaint as filed against the applicant / 8th defendant alone stands rejected, with liberty to the plaintiff to seek appropriate relief under Section 66 of IBC Code, if it is so desires.

27. In fine, this application stands disposed of. No costs.

16-10-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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A No. 1409 of 2



Order QR

K.KUMARESH BABU, J.

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