* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order Reserved on: **06.08.2026**
Order Delivered on:**19.08.2026**

\+ CS(COMM) 800/2025, I.A. 18917/2025, I.A. 18918/2025, I.A. 18921/2025, O.A. 59/2026, I.A. 10831/2026, I.A. 10898/2026 & I.A. 10935/2026

IDBI TRUSTEESHIP SERVICES LIMITED .....Plaintiff

versus

MANISH JAIN & ORS. ....Defendants

Advocates who appeared in this case:

For the Plaintiff: Mr. Pranjit Bhattacharya, Ms. Nitya Prabhakar, Ms. Shalini Basu and Mr. Kunal Dave, Advocates.

For the Defendants: Mr. Sarul Jain, Advocate for D-1.
Mr. Rajat Joneja, Ms. Sakshi Kapoor and Ms. Tina Aneja, Advocates for D-2.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

O R D E R

TUSHAR RAO GEDELA, J.

I.A. 32519/2025 (Application under Order VII Rule 11 (a) and (d), CPC on behalf of Defendant No.2)

1. The present application has been filed by the defendant no.2 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as *"the Act"*) seeking rejection of the plaint on the ground that the present suit is not maintainable *qua* defendant no.2, being barred by law in view of

Section 96 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as *"IBC"*), which provides that no legal proceedings in respect of any debt may be initiated or continued during the subsistence of an interim moratorium. It is further stated that the plaint fails to disclose any cause of action within the meaning of Order VII Rule 11(a) of CPC; and is also vexatious and without merit.

2. It is stated by defendant no.2 that the plaintiff company had filed Company Petition bearing No. C.P. (IB) 206 of 2025 before the Hon'ble National Company Law Tribunal, Chandigarh Bench, against defendant no.3, who is the principal borrower, for an alleged default amount of Rs.15,23,73,367/-. Simultaneously, plaintiff had invoked Personal Guarantee of defendant no.l by issuing a demand notice dated 30.05.2025. However, plaintiff did not invoke PG by defendant no.2, being fully aware that an interim moratorium was already subsisting in respect of defendant no.2, and consequently, no proceedings could have been initiated against the defendant no.2.

3. It is stated that, in order to safeguard the interests of the Debenture Holders of the defendant no.3, the plaintiff proceeded to file the present suit seeking injunctive orders against the PGs i.e. defendant nos.1 and 2. It is in this background that the defendant no.2 has preferred the present application for rejection of the plaint, *inter alia*, on the ground that interim moratorium under Section 96 of the IBC is currently in force against the defendant no.2.

<u>CONTENTIONS ON BEHALF OF DEFENDANT NO.2</u>:

4. Mr. Rajat Joneja, learned counsel appearing on behalf of the defendant no.2 would submit that defendant no.3 is a debenture trustee, who received a

loan amount 64,50,00,000/- by its debenture holders (i.e. Kautilya Finance BV and Kautilya Real Estate Fund), and is a Corporate Debtor (for short "CD"), defendant nos.1 and 2 are Personal Guarantors (for short "PG") to defendant no.3, and defendant no.3 is facing Corporate Insolvency Resolution Process (for short "CIRP") proceedings. It is stated that the present application under Order VII Rule 11 of CPC has been preferred on the ground that the defendant no.3 is undergoing the CIRP, and the defendant nos.1 and 2 being the PG to CD, are enjoying the interim moratorium as provided under Section 96 of the IBC, and therefore, the present suit is not maintainable against the defendants. In support of the application, learned counsel would submit as under:

4.1. At the outset, learned counsel invited attention to the provisions of Section 96 of the IBC to submit that by virtue of such provisions, the defendant no.2 is enjoying the interim moratorium and emphasizes that no suit can be maintainable as against the defendant nos.1 and 2. He also asserted that since the defendant no.3 is the CD, equally the present suit is not maintainable against it, and the plaintiff may have to look for remedies elsewhere.

4.2. He would bring attention of this Court to the amendment brought to Section 96 Insolvency and Bankruptcy Code (Amendment) Act, 2026 (hereinafter referred to as *"Amending Act"*) whereby Section 96 was amended by insertion of sub-section (4) by virtue of Section 51 of the Amending Act with effect from 26.05.2026. Reading sub-section (4), learned counsel would submit that the said provision takes away the interim moratorium granted previously to the PG to CD, and render the said PG liable to be proceeded against in a suit or any other proceedings. However, he would stoutly contend that the same would not have any effect or impact upon the interim moratorium granted in favour of the defendant no.2 for the reason that the plaintiff filed the application under Section 95 of the IBC against defendant no.2 on 10.08.2024, and the amendment was brought into force w.e.f. 26.05.2026. He also submitted that even the Resolution Professional (hereinafter referred to as "the RP"), was appointed on 20.02.2025. He informed that the suit was filed on 28.07.2025, which is much after the interim moratorium was deemed in favour of defendant no.2.

4.3. Learned counsel would forcefully contend that the amendment is prospective and not retrospective, and thus, would not divest the defendant no.2 of the interim moratorium deemed in his favour with effect from 10.08.2024, when the plaintiff filed its application under Section 95 of the IBC against defendant no.2. Referring to the Amending Act, he emphatically urged that there is neither any express nor even an implied suggestion that the amendment brought, was retrospective in operation. He emphasised that the amendment was neither clarificatory nor procedural in nature to have an automatic retrospective application. He would also contend that once a vested right has been conferred by a statute, it cannot be divested by an amendment to the enactment at any time in future, unless of course, expressly made retrospective. Since the Amending Act does not expressly provide for any retrospectivity, this Court cannot read the same into it. If considered so, learned counsel would submit that the suit cannot be maintained against either defendant nos.1 or 2 or even defendant no.3, and is liable to be rejected wholly against all the defendants.

4.4. Referring to the IBC, learned counsel would contend that Sections 94 to 96 fall within Part - III, which is respecting PG on one hand, and PGs to CD, on the other. He also brought attention to the IBC to submit that different provisions of IBC were brought into force on different dates. Likewise, he would submit that provisions of Sections 94 to 96 were brought into force with effect from 15.11.2019, however, significantly in respect only of the PG to CD and not PG *per se.* In this context, he vehemently argued that if the amendment is now to be applied retrospectively, it would render the provisions of Section 96 *otiose*, inasmuch as so far as PG is concerned, it has not been brought into force till date, and so far as PG to CD is concerned, the interim moratorium would be rendered nugatory on account of the amendment being read retrospectively. Thus, in all, the whole of Section 96 of the IBC would be *otiose*, being inapplicable to any entity identified therein. According to learned counsel, this can never be the intention of the Legislature.

4.5. Learned counsel also referred and read the Preamble of IBC and Section 1of the Amending Act to submit that the bare reading of both shows the clear intent of the legislature inasmuch as the Amending Act would apply prospectively i.e. on the proceedings already pending.

4.6. In support of his contentions, learned counsel relied upon the judgments of the Supreme Court in ***Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602, Govind Das v. ITO, (1976) 1 SCC***

906, Snowtex Investment Ltd. v. CIT, (2020) 13 SCC 762, and ***Rajesh Mitra v. Karnani Properties Ltd., 2024 SCC OnLine SC 2607***.

CONTENTIONS ON BEHALF OF THE PLAINTIFF:

5. Mr. Pranjit Bhattacharya, learned counsel appearing for plaintiff stoutly contested and refuted the arguments urged on behalf of the defendant no.2. He would submit that there is no vested right with the PG to CD that moratorium would be deemed by mere filing of an application under Section 94 of the IBC. He clarified that the plaintiff had preferred an application under Section 95 IBC, which permits creditors to file an application under Section 95 of the IBC. He would further submit as under:

5.1. Referring to the provisions of Section 96 of the IBC, learned counsel would forcefully submit that the reliance of defendant no.2 upon the said provision to contend that legislature has conferred interim protection to PG to CD by way of interim moratorium, and created a vested right, is misplaced. He would contend that rather than a right being conferred upon the PGs to CD, the provisions of Section 9 of the IBC deprived the creditor to sue such PGs to CD. Explaining the scheme of IBC, he would contend that the provisions of Section 96 fall within Part - III, which creates an exception and suspends the rights of the creditors from suing the PGs or the PGs to CD. Thus, by way of the amendment, the Legislature has merely reopened the right of the creditors to sue PG to CD, which was kept suspended in the *interregnum*, as an interim moratorium. Thus, what the legislature did was to re-grant the said rights to the creditors which was even otherwise always available and has not taken away any vested right of PG to CD.

5.2. Handing over the Bench a compilation comprising the Amending Act, the Report of the Committee on the Insolvency and Bankruptcy Code (Amendment) Bill, 2025, and judgements relied upon, learned counsel copiously read various clauses in the Report to submit that it is clear that the amendment was recommended by the Committee after having considered the misuse and abuse of the provisions of Section 96 of the IBC, by PGs. Drawing attention to the Amending Act, particularly to Section 51 whereunder sub-section (4) was inserted in Section 96 of the IBC, learned counsel would contend that though retrospectivity has not been specifically mentioned, however, having regard to the Report of the Committee, it is apparent that the amendment was brought into effect to apply to pending cases too, so as to ensure that the abuse could be controlled and reined in.

5.3. Apart from the above, learned counsel would heavily rely upon the judgement of the learned Single Judge of the Bombay High Court in ***Tata Capital Financial Services Limited vs. Neel Motors LLP,*** Commercial Arbitration Petition No.620 of 2021 decided on 24.07.2026, whereby the judgements of the Supreme Court propounding the doctrine of "retroactivity" were considered, followed and applied to the facts arising therein. Learned counsel drew attention to the relevant paragraphs of the Supreme Court judgements in ***Vineeta Sharma vs. Rakesh Sharma,*** reported in ***(2020) 9 SCC 1***; ***Securities and Exchange Board of India vs. Rajkumar Nagpal, (2023) 8 SCC 274***; and ***State Bank's Staff Union (Madras Circle) vs. Union of India, (2005) 7 SCC 584*** to contend that it is trite that amendments in the nature of the present amendment by insertion of sub-section (4) to Section 96 of the IBC would operate retroactively, which is applicable to pending cases, even though the amendment is not "retrospective". He would forcefully contend that the Supreme Court defined the scope of such amendments and applied the doctrine of retroactivity to conclude that having regard to the nature of the amendments which tend to rectify or correct the "mischief" or misuse/abuse that may have crept in, the amended provision would be applicable even to pending cases, notwithstanding that there is no express retrospectivity to those. Therefore, he would submit that the interim moratorium which prevented the plaintiff from suing the PG to CD, that is, the defendant nos.1 and 2, is removed, and the suit would be maintainable. He also relied upon the judgement in ***Dilip B. Jiwrajka v. Union of India, (2024) 5 SCC 435.***

REJOINDER OF THE DEFENDANT NO.2:

6. In rejoinder, Mr Joneja, learned counsel for defendant no.2 would submit that the expression "an application is filed" occurring in sub-section (4) of Section 96 of IBC, has to be necessarily read prospectively, as on the date of coming into force of the amendment and not pending applications. He would contend that once it is clear that the amendment is not retrospective, it cannot have any application to pending cases. It is stated that the Legislature in the provisions of Section 96, IBC had specifically conferred a vested right on the PGs, and PGs to CD, of interim moratorium as and when an application is filed either under Sections 94 or 95 of the IBC, which vested right cannot be taken away by legislation, unless made expressly retrospective. Learned counsel also emphasised that having regard to the fact that the present

amendment to Section 96 is clearly prospective and may affect future applications, however, a right conferred upon the PGs to CD prior thereto, surely cannot be interfered with in this manner.

ANALYSIS AND CONCLUSION:

7. An interesting issue has arisen in this suit by way of an application under Order VII Rule 11, CPC filed by the defendant no.2. In that, whether a benefit granted upon a party by way of a provision in an enactment can be taken away by way of an amendment under the Amending Act without expressly being retrospective. Particularly, while a proceeding is pending in a court of law. Ordinarily, amendments are construed to be prospective, unless retrospectivity is expressed or implied.

8. In order to determine the aforesaid quandary, one has to consider the ratio laid down by the Supreme Court in ***Vineeta Sharma*** *(supra)*. The doctrine of "retroactivity" was profoundly expounded. The relevant paragraphs are reproduced hereunder:

> ***61.*** *The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act.*
>
> [emphasis supplied]

9. The ratio postulated in ***Vineeta Sharma*** *(supra)* propounds that where the Amending Act proposes to rectify the "mischief" that may have arisen or continued despite the enactment being promulgated to address such

"mischief", the amendment is neither retrospective nor can be concluded to be prospective, as it would be construed in the ordinary course. Such an amendment has been held to be "retroactive" in operation, in that, it would clearly apply to all pending proceedings, wherever the circumstances require, and the Courts can give effect to the import of such amendment.

10. It would be apt to appreciate and consider the judgement of a learned Single Judge of the Bombay High Court in ***Tata Capital Financial Services*** *(supra)*, where, while considering an application under Section 9 of the Arbitration and Conciliation Act, 1996, the principle propounded in ***Vineeta Sharma*** *(supra)* was applied. The relevant paragraphs of the judgement of the Bombay high Court is extracted hereunder:

> *"11. Having heard the parties and having examined the record and the provisions of law with their assistance, in my opinion, the phrase "where an application is filed" would bring within its sweep anything that is filed and is pending with the Adjudicating Authority as of that date. If the intention had been to bring within the sweep of Section 96(4) only filings made after the introduction of the provision, the legislature would have consciously used language to that effect. Equally, while it is arguable that the legislature has not used clarificatory language in the provision to indicate that it covers applications already filed and to be filed, in my opinion, this provision would squarely fit within the ambit of a retroactive application. The reading of the words "is filed" as including those that have been filed and are pending, will not give retrospective effect, but will have prospective effect from the date on which the provision takes effect. Therefore, in my opinion, any Application that is filed for initiating an insolvency resolution process in respect of a personal guarantor to a corporate debtor would not fall within the ambit of Section 96(1) and related provisions with effect from May 26, 2026. In other words, anything that "is filed" would include within its sweep anything that has been filed and is continuing to remain under adjudication under the IBC.*
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> *xx xx xx*
>
> *14. A plain reading of the foregoing would make it clear that the term "retroactive", while being used differently in different judgements is actually a prospective application of a newly introduced requirement of a law to facts existing as of the date of the introduction of the requirement.*

> *The mere reason that some facts may have already been into existence but continue to exist would not mean that the application becomes retrospective.*
>
> *15. Applying the same principles to Section 96(4) of the IBC, in my opinion, a moratorium insofar as it operated in respect of Respondent Nos. 2, 3 and 4 until May 25, 2026 ceased to operate with effect from May 26, 2026, in respect of applications filed under Section 95 of the IBC. In this view of the matter, in my opinion, the Petition would need to be considered as not being barred by the moratorium under IBC."*

11. The Supreme Court in ***Vineeta Sharma*** *(supra)* clearly shed the light on those amendments which may neither fall in the category of "prospective" nor "retrospective". A separate category of amendments to a statute was carved out which were propounded as "retroactive". It was held that a retroactive statute is one that does not operate retrospectively, but, *in futuro*. However, such an operation is based upon the character or status that arose earlier. The Supreme Court in ***State Bank's Staff Union*** *(supra)* held as under:

> *"**21.** ….*
>
> *"Retroactivity" is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called "true retroactivity", consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as "quasi-retroactivity", occurs when a new rule of law is applied to an act or transaction in the process of completion…. The foundation of these concepts is the distinction between completed and pending transactions……" T.C. Hartley, Foundations of European Community Law, p. 129 (1981)."*

12. The Supreme Court in ***State Bank's Staff Union*** *(supra)* has further clarified the nature of "retroactivity" into (i) "true retroactivity" where the new rule of law is applied to an act or transaction which was completed before the rule was promulgated; and (ii) "quasi retroactivity" when the new rule or act is applied to act of transaction which is still in the process of completion, in other words, pending. This construction and interpretation appears to have a

direct bearing on the present facts.

13. Finally, the decision of the Supreme Court in ***SEBI vs. Rajkumar Nagpal*** *(supra)*, after examining and analysing the above judgements, held in para 102 of its judgement as under:

> *"**102.** Many decisions of this Court define "retroactivity" to mean laws which destroy or impair vested rights. In real terms, this is the definition of "retrospectivity" or "true retroactivity". "Quasi-retroactivity" or simply "retroactivity" on the other hand is a law which is applicable to an act or transaction that is still underway. Such an act or transaction has not been completed and is in the process of completion. Retroactive laws also apply where the status or character of a thing or situation arose prior to the passage of the law. Merely because a law operates on certain circumstances which are antecedent to its passing does not mean that it is retrospective."*
>
> [emphasis supplied]

14. Reiterating the principles and ratio laid down in the previous judgements, the Supreme Court has succinctly summed the applicability by declaring that retroactive laws also apply where the status or character of a thing or situation arose prior to the passage of the law and that "quasi retroactivity" is a principle of law, which is applicable to an act or transaction that is still underway.

15. It needs emphasis to examine as to whether the amendment brought to Section 96(4) of the IBC would be "retrospective" or "prospective" or as postulated in the aforementioned judgements, "retroactive". Before the said issue is examined, it may be pertinent to consider as to what transpired in the minds of the Select Committee on Insolvency & Bankruptcy Code (Amendment) Bill, 2025 while recommending amendment to Section 96 of IBC, which was proposed under Clause 47 of the said Bill. The relevant provisions like Clauses 47.1, 47.2, 47.3, 47.4, 47.5, 47.5.1, 47.5.2, 47.5.3 and

47.6 are reproduced hereunder:

"47. Clause 47 of the Bill proposes to amend the Section 96 of the Principal Act.

<u>47.1 Provision proposed in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025</u>:

In section 96 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:-

"(4) The provisions of this section shall not apply where an application is filed for initiating an insolvency resolution process in respect of a personal guarantor to a corporate debtor."

<u>47.2. Relevant Provision of the Principal Act (Insolvency and Bankruptcy Code, 2016)</u>:

***96. Interim- moratorium.** – (1) When an application is filed under section 94 or section 95-*

(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and

(b) during the interim-moratorium period –

(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

(2) Where the application has been made in relation to a firm, the interim moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

<u>47.3 Reasons/Justification given by the Ministry for the proposed provisions</u>:

The interim moratorium under section 96 provides that upon the filing of an application, all legal actions or proceedings pending in respect of the concerned debt shall remain stayed, and creditors shall not initiate any legal action or proceeding in respect of such debt.

The Adjudicating Authority (AA) has, on occasion, expressed concerns regarding the misuse of initiation of the individual insolvency resolution process by personal guarantors to take advantage of the interim moratorium. Clause 47 therefore seeks to insert a new sub-section (4) to section 96 of the Code to provide that provisions of section 96 of the Code will not apply where an application to initiate an insolvency resolution process in respect of a personal guarantor to a corporate debtor is filed by a creditor or the debtor itself.

47.4 Important Views/Suggestions given by Experts/Stakeholders:

Some of the important suggestions of the stakeholders in this regard are furnished below:

> *(i) Consider providing an interim moratorium on disposal of assets by the debtor. The report of the Insolvency Law Committee of February 2020 recommended that Section 96 and 124 should be amended to include a stay on actions relating to disposition of assets by the debtor.*
>
> *(ii) Removal of this amendment may be considered. The proposed amendments make the provision of interim moratorium non applicable in cases of personal guarantor to a corporate debtor which provides for protection to the personal guarantor critical from legal actions of the creditors. However, such interim protection is arisen in to practice the resolution process. Some of the other important issues that have insolvency have not been addressed i.e. no thresholds for admission to guarantors etc. process have been specified, no specific guidelines for MSME guarantors etc.*
>
> *(iii) The Bill seeks to introduce a new sub- section excluding application of interim moratorium in respect of personal guarantor to a CD. Non-application-of interim moratorium might encourage the personal guarantor to dispose of their assets to the detriment of creditors. Non-application of interim moratorium might encourage the disposal PG to of dispose assets of by assets PG, to the detriment of creditors. To prevent such wrongful provisions for moratorium may be introduced to prohibit alienation of assets by the guarantors post filing of the application.*

47.5 Examination by the Committee:

47.5.1 The Ministry in their written replies to the corresponding suggestions above have submitted as under:

(i) The interim moratorium under section 96 provides that upon the filing of an application, all legal actions or proceedings pending in respect of the concerned debt shall remain stayed, and creditors shall not initiate any legal action or proceeding in respect of such debt. Concerns have been expressed regarding the misuse of initiation of the individual insolvency resolution process (IIRP)by PGs to take advantage of the interim moratorium. To remove any perverse incentives to initiate IIRP, the proposed amendment seeks to dispense with the concept of interim moratorium for the insolvency of PG to CD. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(ii) Additionally, Part III currently applies to personal guarantors, who may or may not be MSMEs. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iii) It is clarified that the proposed Amendment Bill restricts the interim moratorium protection for personal guarantors, thereby creating a level playing field for PGs and their creditors to seek appropriate remedies outside the IBC before the insolvency resolution or bankruptcy process is initiated. Hence, no changes required. to the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 are required.

47.5.2 Regarding the issue of removal of Interim moratorium, the secretary, Ministry of Corporate Affairs stated as under during the deposition before the Committee:

"This concerns individual insolvency, personal guarantees, etc. They recommend reconsidering the removal of interim moratorium protection for personal guarantors during insolvency and bankruptcy processes. They also suggest allowing automatic commencement of the bankruptcy process without a three-month gap after completion of the CIRP or liquidation proceedings. They further propose extending provisions similar to Section 66 regarding fraudulent or wrongful trading to personal insolvency. Our position is that removing the interim moratorium for personal guarantors is intended primarily to prevent misuse. Currently, when recovery proceedings begin against a personal guarantor, the guarantor rushes to file an application before the NCLT, triggering the interim moratorium immediately. This provision has been subject to misuse, hence our proposal to remove it. Under statutes such as SARFAESI and through multiple Supreme Court judgments, it is very clear that the creditor is not required to exhaust remedies against the borrower first. The law treats the borrower and guarantor on the same footing once default occurs. That means, once

there is a default, the law applies equally to the borrower as well as to the guarantor. It is pointed out in the SARFAESI Act, there is no moratorium."

47.5.3. Elaborating further on the issue, Chairperson, IBBI stated as under during oral evidence:

> *NCLT members have repeatedly flagged this issue. In fact, in our colloquiums, they cite it as the number one mechanism through which thousands of crores are being siphoned off. Therefore, this amendment is one of the most crucial for plugging a major loophole in the IBC.*

47.6 Observations/Recommendations of the Committee:

The Committee note that Clause 47 seeks to amend Section 96 to exclude personal guarantors to corporate debtors from the scope of the interim moratorium. The Committee observe that this amendment is aimed at addressing a persistent concern flagged by the Adjudicating Authority and insolvency practitioners namely, the misuse of interim moratorium by personal guarantors who file applications solely to obstruct or delay legitimate recovery proceedings, a major loophole confirmed by NCLT members to be responsible for significant value erosion. The Committee, having considered detail submissions of the Ministry and IBBI, underscore that removing this unnecessary pre-admission shield is essential. The Committee observe that the law, consistent with SARFAESI Act and Supreme Court judgements, treats the borrower and the guarantor on the same footing upon default, and the proposed amendment does not deprive personal guarantors of the right to seek insolvency resolution or bankruptcy under Part III of the Code. In view of the above, and recognising the need to curb strategic filings and strengthen the integrity of the insolvency process, the Committee find the proposed amendment under Clause 47 to be appropriate and recommend its acceptance in its present form."

16. The recommendation brooks no ambiguity. It is apparent that the amendment, by insertion of sub-section (4) to Section 96 of the IBC, was brought in only to rectify the "mischief" and the misuse/abuse of the sub-sections (1) to (3) of Section 96 of IBC. By way of the amendment, it was sought to ensure that the provisions of Section 96 would not apply where an application to initiate an Insolvency Resolution Process in respect of a PG to CD is filed by the creditor or the debtor itself.

17. It is significant to note that the Committee was sensitive and acutely aware of the fact that though such interim protection is critical to the resolution process, yet some other important and critical issues which have arisen in practise, have not been addressed. After having heard and considered the issues and concerns of various stakeholders including the Ministry of Corporate Affairs which voiced its concern and stated that the removal of interim moratorium for PG is primarily intended to prevent misuse, the Committee formed an opinion that "*.....this amendment is aimed at addressing a persistent concern flagged by the Adjudicating Authority and the insolvency practitioners namely, the misuse of interim moratorium by personal guarantors who file applications solely to obstruct or delay legitimate recovery proceedings, a major loophole confirmed by NCLT members to be responsible for significant value erosion*". And that, "*The Committee, having considered detailed submissions of the Ministry and IBBI, underscore that removing this unnecessary pre-admission shield is essential*". Consequently, the amendment to Section 96 by addition and insertion of sub-section (4) was recommended in terms of Clause 47 of the IBC Bill, 2025.

18. Aptly, this Court is of the considered opinion that the Committee having noted the misuse and abuse of the provisions in Section 96 of the IBC clearly accepted the proposal in Clause 47 of the aforesaid Bill and recommended the amendment to Section 96 by addition and insertion of sub-section (4) solely to rectify and remove the "abuse", even if not the "mischief" that was being caused, and noted with great alacrity by the stakeholders, and appreciated by the Committee.

19. Learned single Judge of the Bombay High Court in ***Tata Capital***

Financial *(supra)* having examined the aforenoted judgements of the Supreme Court read the words "*is filed*" occurring in sub-section (4) to mean even those which were filed prior in time but are still pending adjudication as on 26.05.2026, when the amendments were brought into force. This view, and the view taken by this Court are well aligned.

20. *Apropos* the above, read conjointly, the aforesaid amendment to Section 96 of IBC by addition and insertion of sub-section (4), and the principles of "retroactive" legislation laid down by the Supreme Court, leave no doubt in the mind of this Court that the provisions of sub-section (4) of Section 96 of IBC by way of the amendment dated 06.04.2026, are "retroactive", even though the Amending Act did not expressly state so. If that be so, then the import, purport and impact of such retroactive legislation would amount to "quasi retroactivity" and would be applicable to pending applications. It is not denied in the present case that the defendant no.2 is the PG to the CD (defendant no.3). It is also admitted that the application under Section 95 of the IBC has been filed by the plaintiff (creditor) and is still pending adjudication before the National Company Law Tribunal. Thus, as a *sequitor*, the provisions of sub-section (4) of Section 96 of IBC shall apply to the pending application of the plaintiff, and the interim moratorium enjoyed hitherto before by the defendant no.2 (PG to CD), would be deemed to have been vacated.

21. Clearly, this Court is not called upon to consider whether the defendant no.2 is deprived of the interim moratorium enjoyed by it, and rather, is only to consider as to whether the present suit is barred under the principles of Order VII Rule 11 CPC on the anvil of the said proscription.

22. Now, that this Court has arrived at the conclusion that the provisions of Section 96(4) of the IBC are applicable to the application filed by the plaintiff under Section 95 of IBC, by deeming fiction the interim protection of moratorium and the bar against the plaintiff instituting a suit against the defendant no.2 (PG to CD), stands removed by retroactive operation of law.

23. A lot many arguments were raised surrounding the effect of Section 96 of IBC being made partially applicable to only the PG to CD and not to PG *per se,* as per the Principal Act. It was stated that when Section 96 was brought into force, though Part-III of the Principal Act concerned itself with providing interim moratorium to both PG, and PG to CD, however, was brought into effect *qua* PG to CD only, and if the interpretation of the effect of amendment is taken in the manner suggested by the plaintiff, then the provision itself would be rendered *otiose*.

24. This apprehension is unfounded. By way of the amendment, the Legislature, being conscious of the misuse and abuse of the provisions of Section 96 of the Principal Act, taking the aid of the Report of the Committee referred to above, inserted sub-section (4) to Section 96 of IBC. Possibly, the Legislature could have omitted Section 96 altogether. However, it cannot be overlooked that the Principal Act *vide* Section 96 of IBC also proposed to grant protection to PG by way of interim moratorium, as and when it was deemed fit and expedient. This construction is apparent from the fact that in the Principal Act, the Legislature had expressly stated that different dates may be appointed for different provisions of the Act, and any reference in such provision to the commencement of the Act should be construed as a reference to the coming into force of that provision. Therefore, it is amply clear that

Section 96 may still be made applicable to PGs *in futuro*. Thus, merely for the reason that one part of Section 96 is made redundant or unworkable, would not, to the mind of this Court, *ipso facto*, render the provision *otiose*.

25. Thus, so far as the question of law raised by the defendant no.2 is concerned, it is answered in favour of the plaintiff.

26. So far as the application under Order VII Rule 11, CPC on the objections on cause of action is concerned, learned counsel for the defendant no.2 had fairly stated that the same need not be delved into by this Court at this stage and may be left to be considered and examined at an appropriate stage. On that, this Court is not examining the said issue on facts.

27. *Ab supra*, the application under Order VII Rule 11 CPC, is bereft of any legal or foundational objections, and is unmerited, unpersuasive, and thus, rejected.

28. In view of the above, the application stands disposed of.

CS(COMM) 800/2025, I.A. 18917/2025, I.A. 18918/2025, I.A. 18921/2025, O.A. 59/2026, I.A. 10831/2026, I.A. 10898/2026 & I.A. 10935/2026

29. List on 02.11.2026.

TUSHAR RAO GEDELA
(JUDGE)

AUGUST 19, 2026
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