
(2020) 12 DEL CK 0161

In the Delhi High Court

Case No : Miscellaneous Application No. 10556 Of 2020 In Civil Suit (COMM) No. 500 Of 2020

Zee Entertainment Enterprises Limited

APPELLANT

Vs

Indusind Bank Limited & Anr

RESPONDENT

Date of Decision : 21-12-2020

Acts Referred:

Specific Relief Act, 1963 — Section 34, 38, 41(b), 41(d)

Citation : (2020) 12 DEL CK 0161

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Neeraj Kishan Kaul, Bindi Dave, Aman Raj Gandhi, Deepak Joshi, Abhishek Sharma, Pranav Saigal

Judgement

.....

Rajiv Shakdher, J"

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Preface: -

1. In the captioned interlocutory application filed on behalf of the plaintiff i.e. Zee Entertainment Enterprises Limited [hereafter referred to as

â??Zeeâ?], essentially, the following directions are sought:"

1.1. First, stay the effect and implementation of the demand raised by defendant no. 1 i.e. IndusInd Bank Limited [hereafter referred to as" ,,,,,,

â??Bankâ??] via its letter dated 01.10.2020.,,,,,,

1.2. Second, direct defendant no. 2 i.e. Siti Networks Limited [hereafter referred to as â??Sitiâ?], which is the principal borrower, to replenish the" ,,,,,,

Debt Servicing Reserve Account [DSRA Account] with an amount equivalent to one quarterâ??s interest. This prayer is accompanied by a ,,,,,,

consequential direction, which is, that the Bank should accept the amount offered by Siti in that behalf." ,,,,,,

1.3. Third, the Bank and/or its associates, agents and employees should be restrained from recovering the amount demanded via its communication" ,,,,,,

dated 01.10.2020. Furthermore, an injunction is sought against the recovery of monies by the Bank from Zee beyond the terms of the DSRA" ,,,,,,

Guarantee Agreement dated 29.08.2018 [hereafter referred to as the â??DSRA Guarantee Agreementâ?]. ,,,,,,

1.4. Lastly, injunct the bank and/or its associates, agents and employees from addressing any communication, whether formal or informal, to the stock" ,,,,,,

exchanges, credit information companies, and credit rating agencies relating to Zeeâ??s purported default concerning the DSRA Guarantee" ,,,,,,

Agreement. ,,,,,,

2. As is evident from a perusal of the prayers, Zee has filed the instant action to restrain the Bank from invoking the DSRA Guarantee Agreement." ,,,,,,

Therefore, what is pivotal to the decision in the present interlocutory application is: whether or not the demand raised by the Bank vide notice dated" ,,,,,,

01.10.2020 is as per the terms of the DSRA Guarantee Agreement? ,,,,,,

2.1. Zee has attempted to demonstrate that as a guarantor, its liability is limited to an amount equivalent to one quarterâ??s interest and a further" ,,,,,,

amount equivalent to one quarterâ??s principal instalment as and when due. ,,,,,,

2.2. Zee is aggrieved by the fact that the Bank has made a demand for an accelerated amount i.e. the entire loan amount advanced by the Bank to Siti ,,,,,,

on account of the shortfall in the DSRA Account. The demand made by the Bank, via its communication dated 01.10.2020, as on that date, is pegged" ,,,,,,

at Rs. 83,70,14,289." ,,,,,,

2.3. What has caused further consternation is the threat held out by the Bank that if the demand is not met, it shall report the default to various stock" ,,,,,,

exchanges, credit information companies and credit rating agencies." ,,,,,,

Background facts: - ,,,,,,

3. Given the aforesaid preface, it would be helpful if the circumstances which have led to the institution of the present action are broadly set forth" ,,,,,,

hereafter. ,,,,,,

3.1. Siti was sanctioned, a credit facility of Rs. 400 crores by the Bank on 29.06.2018 via two separate letters [i.e. Sanction No: IBL/CAD/987/2018-" ,,,,,,

19 (hereafter referred to as "the 1st sanction letter") and Sanction No: IBL/CAD/988/2018-19 (hereafter referred to as "the 2nd sanction ,,,,,,

letter") of the same date. The 2nd sanction letter was only a continuation/ modification of the earlier letter, although, the terms and conditions" ,,,,,,

remained substantially the same. The sanctioned credit facility was sub-divided into the following two facilities. ,,,,,,

A. Facility-I was a term loan having a sanctioned limit of Rs. 250 crores. ,,,,,,

B. Facility-II was also a term loan having a sanctioned limit of Rs. 150 crores with a bank guarantee [BG] facility sub-limit of Rs. 95 crores. ,,,,,,

3.2. The sanction letter stipulated that the facilities extended would be available only upon the execution of the requisite security documents," ,,,,,,

submission of the required undertakings, creation of the requisite charges over assets, and guarantors' assets, if applicable. The terms and" ,,,,,,

conditions were more specifically detailed out in Annexure I of the 1st sanction letter. Amongst various terms set out in Annexure I, the following," ,,,,,,

which are, to my mind, relevant, for adjudication of the instant application and concern facility-II, are set forth hereafter." ,,,,,,

" Annexure I ,,,,,,

" Terms and Conditions ,,,,,,

" Siti Networks limited ,,,,,,

Lender/Bank IndusInd Bank Ltd (IBL) ,,,,,,

Borrower Siti Networks Limited (SNL) ,,,,,,

Timeline, 31 Dec 18, 30 Jun 19, 31 Dec 19, 30 Jun 20, 31 Dec 20, 30 Jun 21

Repayment

(INR cr)", 10.0, 25.0, 25.0, 50.0, 50.0, 90.0

xxx xxx xxx ,,,,,,

On occurrence of all other Events of Default except for payment default (no cure period for payment default); a cure period of 30 days will be given.,,,,,,

Immediately after the expiry of cure period or In case of payment default immediately thereafter. the Lender will have the right, without any obligation",,,,,,

to do so, to recall the entire facility and/or charge penal rate/increase the pricing and/or ask for additional security/guarantee/other credit",,,,,,

enhancements /change existing sanction terms and /or enforce security.â??,,,,,,

3.3. Thus, in consonance with the terms of the sanction letter, the following documents were executed:",,,,,,

A. Hypothecation agreement dated 24.08.2018 i.e. the loan agreement between Siti and the Bank.,,,,,,

B. Debt Servicing Reserve Account Agreement dated 24.08.2018 [hereafter referred to as the â??DSRA Agreementâ??] between Siti and the Bank.,,,,,,

C. DSRA Guarantee Agreement executed between Zee and the Bank. As noticed above, this agreement was executed on 29.08.2018.",,,,,,

3.4. In consonance with Clause 4 of the DSRA Guarantee Agreement, and the format letter set out in the Schedule appended thereto, Zee, from time",,,,,,

to time, declared, and confirmed the liability it owed to the Bank. The confirmation letters sent, in this behalf, by Zee to the Bank are dated 31.08.2018,",,,,,

18.10.2018, and 07.12.2018. The relevant extracts from these letters are set forth hereafter.",,,,,,

Extract from letter dated 31.08.2018.,,,,,,

Extract from letter dated 18.10.2018.,,,,,,

Extract from letter dated 07.12.2018.,,,,,,

3.5. Zee indicated, via these letters, that the contents of the letters formed an integral part of the DSRA Guarantee Agreement and, thus, the terms",,,,,,

and conditions contained in the DSRA Guarantee Agreement would apply mutatis mutandis to the said letters as well.,,,,,,

3.6. It appears that the first time around when the Bank conveyed to Siti to regularise its accounts was via an e-mail dated 12.09.2019. At that.,,,,,,

juncture, the Bank inter alia called upon Siti to deposit Rs. 0.67 crores in the DSRA Account to restore the balance therein as per the sanctioned",,,,,,

terms, since on account of non-payment of overdue interest of an equivalent amount for June 2019, the Bank had to dip into the DSRA Account. The",,,,,,

Bank conveyed to Siti that if the course correction was not made immediately, as requested, it would be treated as an event of default and thus, would" ,,,,,,

trigger consequential actions which included the acceleration of all credit facilities advanced to Siti as also enforcement of security. This apart, the e-" ,,,,,,

mail also gave details of overdue interest under facility-I and facility-II [including the BC facility i.e. the sub-limit] for June, July and August 2019." ,,,,,,

Pertinently, the e-mail dated 12.09.2019 and the letter of the same date which required replenishment of 0.67 crores in the DSRA Account was" ,,,,,,

copied to Zee as well. Interestingly, in the e-mail, a reference was made to the managing director of Zee i.e. one, Mr. Puneet Goenka who, it seems, " ,,,,,,

had assured, as per the Bank's contention, that no account of the Essel group would be allowed to slip into an NPA." ,,,,,,

3.7. The record shows that on 02.03.2020, the Bank inter alia notified Zee that in terms of Clause 6 of the DSRA Guarantee Agreement, it has, " ,,,,,,

without prejudice to its other rights, modified the terms of maintenance of credit balance in the DSRA Account. In other words, the Bank" ,,,,,,

communicated to Zee, by placing reliance on various clauses of the DSRA Guarantee Agreement, that it had the right to accelerate the" ,,,,,,

borrower's/Siti's dues under facility-II and that if the borrower/Siti failed to fully discharge such liability to its satisfaction, it could call upon" ,,,,,,

Zee to pay the entire accelerated amount. Thus, apart from Clause 6, as noticed above, the Bank referred to Clause 2, 7, 9, 10, 11, and 24 of the" ,,,,,,

DSRA Guarantee Agreement. ,,,,,,

3.8. It appears that apart from anything else the DSRA Account remained irregular which prompted the Bank to shoot off an e-mail on 04.03.2020 to ,,,,,,

Siti. This mail was also copied to Zee. The Bank inter alia communicated that insofar as facility-II was concerned, there was an interest overdue of" ,,,,,,

Rs. 1.99 crores since 31.12.2019 and a shortfall in the DSRA Account to the tune of 0.68 crores. Furthermore, within a day of this e-mail, on" ,,,,,,

05.03.2020, the Bank directly addressed an e-mail to Zee and, thereby, notified Zee that under the DSRA Guarantee Agreement, the DSRA amount" ,,,,,,

stood enhanced to include all the unpaid dues of Siti under facility-II. The relevant extract of this letter reads as follows. ,,,,,,

Accordingly, we hereby put you on notice that the DSRA Amount and your liability under the DSRA Guarantee in terms of the Facility" ,,,,,,

Documents stands enhanced to include all of the Borrower's unpaid dues under the Facility; details of the total outstanding to be paid by ZEEL,,,,,,

under the DSRA guarantee agreement is:,,,,,,

â?¢ TL-2-vide Sanction ref no: IBL/CAD/987/2018-19 dated Juneâ?¢29-2018 backed by DSRA Guarantee from Zee Entertainment,,,,,,

Enterprises Ltd (ZEEL),,,,,,

â?¢ Interest Overdue- Rs. 1.99 crs since 31st Dec 2019;,,,,,,

â?¢ Principal o/s to be paid up immediately is Rs. 83.08 crs,,,,,,

â?¢ In the event of the borrower failing to do so, DSRA Guarantor-ZEEL is also notified by way of this mail and also the enclosed letter" ,,,,,,

sent by Registered post to replenish the DSRA which includes enhanced amount of Principal o/s and interest overdue with immediate,,,,,,

effect.â?¢, ,,,,,,

3.9. It appears that none of the communications sent by the Bank was responded to by either Siti or Zee which, ultimately, propelled the Bank to issue" ,,,,,,

an e-mail dated 21.04.2020 to Zee whereby it called upon Zee to inter alia make up for the shortfall in the DSRA Account to the tune of Rs.,,,,,,

1,96,17,865.75 within two days. The Bank also conveyed that if replenishment was not made and other non-compliances were not regularised as" ,,,,,,

pointed out in the said communication, it would be constrained to take recourse to other remedies which would include acceleration of the facility and" ,,,,,,

demand for forthwith Â repayment of the principal amount of Rs. 83,08,00,000 along with applicable interest, default interest, charges and other" ,,,,,,

amounts.,,,,,,

4. The aforementioned e-mail was followed by a letter of the same date i.e. 21.04.2020, which notified both Siti and Zee that there had been non-" ,,,,,,

compliance of the terms on which the loan under facility-II had been advanced to the former and that the failure to rectify the non-compliances would,,,,,,

immediately lead to the acceleration of the principal amount with applicable charges and other amounts. It may be relevant to note that a separate,,,,,,

letter on the same lines which was also dated 21.04.2020 was addressed by the Bank to Zee.,,,,,,

5. Given this background, on 17.06.2020, the Bank addressed an e-mail to Zee communicating to it amongst other matters that the shortfall had not" ,,,,,,

been met despite several reminders. This led the Bank into issuing to Zee via e-mail, a notice dated 01.09.2020, to the effect, that since an event of default had occurred, the DSRA Guarantee stood invoked and, therefore, it was required to repay the entire outstanding amount under facility-II. This e-mail was accompanied by a final notice of the same date i.e. 01.09.2020. Thus, Zee was given 5 days to pay to the Bank, the aggregate amount outstanding as on that date i.e. Rs. 83,08,00,000/-.

5.1. Since there was no response from Zee, via an e-mail dated 11.09.2020, the Bank, inter alia, communicated to Zee that it would be constrained to report the default to the stock exchanges, credit information companies and credit agencies and also initiate proceedings concerning default before appropriate courts and tribunals. The e-mail was accompanied by a final notice of the same date i.e. 11.09.2020.

5.2. For the first time, via a communication dated 14.09.2020, Siti responded to Zee's notices dated 01.09.2020 and 11.09.2020 whereby it inter alia stated that since there is a shortfall of Rs. 2 crores in the DSRA Account towards overdue interest payments under facility-II for the quarter ending 30.09.2020, it would find an "amicable solution" to the issue concerning the same. Siti went on to say that it will make good the shortfall so that discussions could be undertaken concerning other issues in the communication. Furthermore, Siti also indicated that Zee had only guaranteed the amount payable under the DSRA Account and not the entire amount owed by it under facility-II.

5.3. Thereafter, there was back and forth till Zee via its communication dated 24.09.2020 for the first time responded to the Bank's notices dated 01.09.2020 and 11.09.2020 and the email dated 17.09.2020 addressed by the Bank to Zee. Also, thereto, in this communication, there is a reference to the letter dated 14.09.2020 addressed to the Bank. Via this communication, Zee inter alia took the position that because out of Rs. 400 crores sanctioned under facility-I and facility-II, Rs. 243.96 crores were not disbursed, it caused severe liquidity problems for Siti and ultimately impacted Siti's ability to pay the amount owed to Zee towards operational dues. It was stated that Siti along with its subsidiaries and JVs owed Rs. 231.80 crores to Zee. Furthermore, insofar as its liability under the DSRA guarantee Agreement was concerned, it took the position that its liability was

restricted to the DSRA amounts and not the entire outstanding under facility-II.,,,,,,

5.4. In the meanwhile, the Bank responded to Siti's letter dated 14.09.2020 via communication dated 24.09.2020 wherein it reiterated its earlier",,,,,,

stand. This communication was addressed both to Siti and Zee. The Bank having exhausted its patience, via an email dated 01.10.2020 terminated the",,,,,,

facility-II and made a demand for accelerated payment of the full amount. For this purpose, 30 days was granted to the borrower and the guarantor",,,,,,

i.e. Siti and Zee. A separate letter of the same date i.e. 01.10.2020 was also served on Siti and Zee wherein demand for defraying the entire liability,,,,,,

under facility-II was made.,,,,,,

5.5. The aforesaid notice of demand dated 01.10.2020 was followed by yet another communication which was sent via e-mail dated 27.10.2020. Via,,,,,,

this e-mail, the Bank inter alia communicated that as per the DSRA Agreement, the entire outstanding amount was required to be funded in the",,,,,,

DSRA Account no later than 10 calendar days before the final due date, failing which, Zee would be liable under the DSRA Guarantee to fund i.e.",,,,,,

remit such amount to the DSRA Account. Zee was reminded that Siti had failed to deposit the entire amount in the DSRA Account and the final due,,,,,,

date was only three days away i.e. would fall on 31.10.2020. Given these facts, the Bank called upon Zee in its capacity as the guarantor to",,,,,,

immediately deposit Rs. 83.08 crores in the DSRA Account failing which the amount would become overdue on 31.10.2020. The Bank also indicated,,,,,,

to Zee that if corrective measures were not taken, it would take recourse to consequent remedies against Siti/Zee without further notice.",,,,,,

5.6. It appears that Zee did not respond to either the demand notice dated 01.10.2020 or the e-mail dated 27.10.2020 and instead approached this,,,,,,

Court via the instant action.,,,,,,

Submissions on behalf of the parties: -,,,,,,

6. The arguments on behalf of Zee were advanced by Mr. Neeraj Kishan Kaul, senior advocate while submissions on behalf of the Bank were made",,,,,,

by Mr. Rajiv Nayar, senior advocate. Siti was represented by Ms. Ritwika Nanda.",,,,,,

7. Mr. Kaul, broadly, made the following submissions.",,,,,,

7.1. The DSRA Guarantee Agreement which was executed between Zee and the

Bank was an independent arrangement and, therefore, the liability" ,,,,,,

of Zee had to be construed, if at all, strictly in terms of the said agreement." ,,,,,,

7.2. The liability of Zee was confined to one quarter's interest and a further amount equivalent to one quarter's principal instalment as and ,,,,,,

when the same fell due. This was evident if one were to have regard to the second and third recital and Clauses 2, 4, 7, and 24 of the DSRA" ,,,,,,

Guarantee Agreement. ,,,,,,

7.3. The stand adopted by the Bank that it was empowered under the DSRA Guarantee Agreement to recover from Zee the accelerated amount ,,,,,,

under facility-II by relying upon Clauses 1.1, 4 (b), and 10 of the DSRA Agreement was completely erroneous. The Bank ought not to be allowed to" ,,,,,,

read anything into the DSRA Guarantee Agreement which is not provided therein. ,,,,,,

7.4. Contrary to the assertion of the Bank, neither Zee nor Siti had agreed to the modification of the DSRA amount. Therefore, even if there is an" ,,,,,,

occurrence of an event of default under Clause 10 of the DSRA Agreement, the Bank is not entitled in law to raise a demand qua the accelerated" ,,,,,,

amount from the DSRA Account. The Bank, in this behalf, has misconstrued Clause 6 of the DSRA Guarantee Agreement. The Bank cannot" ,,,,,,

unilaterally modify the terms and conditions concerning the DSRA Account. Since there has been no modification or amendment of the sanction letter ,,,,,,

which is dated 29.06.2018 concerning the maintenance of credit balance in the DSRA Account, there could have been no modification of Clause 2 of" ,,,,,,

the DSRA Guarantee Agreement. If the Bank is allowed to interpret the DSRA Guarantee Agreement, in this fashion, it would convert the said" ,,,,,,

agreement from a ""limited guarantee agreement"" to a ""corporate guarantee"" something which was never the intention of the parties." ,,,,,,

7.5. The reference to the SEBI memorandum and SEBI circular dated 21.11.2019 in the Bank's reply to suggest that Zee has been a defaulter is ,,,,,,

misleading. Zee's name has been carelessly mentioned in paragraph 5.2 of the aforementioned memorandum. The incident of default referred to ,,,,,,

therein concerned promoter group borrowings and in that connection, recourse was taken to Zee's shares. Zee has never defaulted, as" ,,,,,,

suggested, qua its borrowings." ,,,,,,

7.6. Likewise, the reference to the minutes of meeting dated 15.09.2020 of the

Joint Lenders meeting concerning Siti is once again misleading. The" ,,,,,,

Bank, by relying upon these minutes, has mischievously tried to suggest that one, Mr. Ronak Jatwala who was present at the meeting was an" ,,,,,,

employee of Zee. Mr. Jatwala is neither an employee nor a representative of Zee. The said meeting was not attended by any representative of Zee.,,,,,,

Therefore, what transpired at the said meeting, cannot be attributed to Zee." ,,,,,,

7.7. The reference in the Bank's reply to the notes to accounts contained in the standalone financial results of Zee for the quarter and half year ending ,,,,,,

on 30.09.2020 is made with the view to somehow demonstrate that Zee has admitted its liability qua the entire accelerated amount concerning facility- ,,,,,,

II. A bare perusal of the notes to accounts would demonstrate that the contrary is true.,,,,,,

7.8. Similarly, the reference made by the Bank, in its reply to e-mail dated 05.10.2020, by Siti to the Bank, cannot be used to establish that Zee has" ,,,,,,

admitted its liability qua the accelerated amount. The reason why it is so is that, firstly, the e-mail had not emanated from Zee and secondly, the e-mail" ,,,,,,

only sets out various loans taken by Siti by tabulating them under separate heads which are then correlated with those that are backed by Zeeâ??s ,,,,,,

DSRA Guarantee. A careful perusal of the information provided in the said e-mail would show that it reveals that Zee has availed a total of 138.50 ,,,,,,

crores from Siti out of which 55.40 crores was advanced under facility-I while the remaining 83.10 crores were advanced under facility-II which is ,,,,,,

backed by Zee's DSRA Guarantee. The table does reveal that under facility-II there is no overdue interest. The e-mail does not in any manner ,,,,,,

suggest that any amount is neither due or that the total loan under facility-II i.e. 83.10 crores is payable by Zee.,,,,,,

7.9. In support of the submissions made hereinabove concerning strict construction of the terms of the guarantee and that the guarantor ought not to ,,,,,,

be made liable beyond the terms of its engagement, reliance was placed on the following judgements." ,,,,,,

a) Adamsab Usmansab Kanakya vs. Gurushinddayya Lingayya & Ors., AIR 1967 Mys. 147." ,,,,,,

b) Aditya Narayan Chouresia vs. Bank of India & Ors., 1999 SCC Online Pat 949." ,,,,,,

c) State of Maharashtra vs. M. N. Kaul, AIR 1967 SC 1634." ,,,,,,

8. As regards the objection taken qua the jurisdiction of this Court, the contention was that since the DSRA Guarantee Agreement was executed in" ,,,,,,

New Delhi, this Court had jurisdiction as a part of the cause of action arose within the territorial jurisdiction of this Court. In support of this plea," ,,,,,,

reliance was placed on the following judgement.,,,,,,

a) A.B.C. Laminart Pvt. Ltd. & Anr. vs. A.P. Agencies, Salem, (1989) 2 SCC 163." ,,,,,,

b) ICICI Bank Ltd. vs. Rathi Syntax Ltd., 2015 SCC OnLine Del 13320." ,,,,,,

c) Kusum Ignots & Alloys Ltd. vs. Union of India & Anr., (2004) 6 SCC 254." ,,,,,,

8.1. In this behalf, it was also contended that since Zee was the plaintiff qua the instant action, it was dominus litus and, therefore, out of many forums" ,,,,,,

it could choose any one forum which otherwise had jurisdiction. In this behalf, reference was made to Dhannalal vs. Kalawatibai & Ors., (2002) 6" ,,,,,,

SCC 16.,,,,,,

8.2. It was also contended that the reliance placed by the Bank on Section 41(b) of the Specific Relief Act, 1963 [in short â??1963 Actâ?] was" ,,,,,,

misconceived. Zee had not sought any relief which would in any manner restrict the right of the Bank to initiate legal proceedings. Zee had only.,,,,,,

sought a declaration that the demand letter dated 01.10.2020 issued by the Bank was illegal as it was beyond the scope and the mandate of the DSRA.,,,,,,

Guarantee Agreement. Based on this declaration, a consequential relief of permanent injunction has been sought. In this behalf, reliance was placed" ,,,,,,

on Section 34 and Section 38 of the 1963 Act.,,,,,,

9. On the other hand, Mr. Nayar advanced the following submissions." ,,,,,,

9.1. Firstly, this Court lacked territorial jurisdiction as the only reason advanced by Zee to approach this Court by way of the instant action was the" ,,,,,,

execution of the DSRA Guarantee Agreement in New Delhi. This, by itself, would not confer jurisdiction on this Court. No part of the cause of action" ,,,,,,

arose in Delhi as every communication referred to in the cause of action clause [i.e. paragraph 11 of the plaint] was neither issued from Delhi nor was.,,,,,,

it received in Delhi. The demand notice dated 01.10.2020 which is assailed by Zee was issued from and received in Mumbai. Reliance, in this behalf," ,,,,,,

was placed on the following judgements.,,,,,,

a) South East Asia Shipping Co. Ltd. vs. Nav Bharat Enterprises (P) Ltd., (1996) 3 SCC 443",,,,,,

b) Oil and Natural Gas Commission vs. Utpal Kumar Basu, (1994) 4 SCC 711",,,,,,

9.2. The reliefs sought for by Zee, in effect, would result in injuncting the Bank from instituting legal proceedings which is impermissible in law as is",,,,,,

evident from a bare perusal of the provisions of Section 41(b) and (d) of the 1963 Act. [See: Horlicks Ltd. & Anr. vs. Heinz India (Pvt.) Limited, 2009",,,,,,

SCC OnLine Del 3342; and Cotton Corpn. of India Ltd. vs. United Industrial Bank Ltd., (1983) 4 SCC 625]",,,,,,

9.3. The fact that Zee is a defaulter can be ascertained from a bare perusal of the memorandum and the circular dated 21.11.2019 issued by the",,,,,,

SEBI. These documents set out defaults by listed companies qua payment of interest/repayment of principal amount against loans taken inter alia from",,,,,,

banks/financial institutions. SEBI is required to disclose this information. Besides, the Bank is obliged to share information of default of its borrower",,,,,,

under the Credit Information Companies (Regulation) Act, 2005.",,,,,,

9.4. Therefore, the injunction sought by Zee against disclosure of defaults concerning payment of interest and/or principal amount is contrary to the",,,,,,

provisions of the aforementioned statute and, hence, ought not to be granted.",,,,,,

9.5. The sanction letter places on Siti the obligation of securing the repayment of monies lent to it via facility-I and facility-II, by having it ""maintain a",,,,,,

minimum amountâ? in the DSRA Account. The intention of the parties concerning the DSRA Account comes to fore upon perusal of the following",,,,,,

extract from the 1st sanction letter",,,,,,

â??Lender shall have the right to utilize the DSRA in case of any non-payment of interest/principal by the Borrower. In case of any dip in DSRA the",,,,,,

same to be immediately replenished by the borrower.â??",,,,,,

9.6. Thus, the condition stipulated in the 1st sanction letter was reflected in the DSRA Agreement as well wherein it was provided that DSRA amount",,,,,,

will be maintained in the DSRA Account till the â??final settlement dateâ? and that the DSRA amount would ""not be less than"" one quarter's interest",,,,,,

and next principal payment for the ensuing quarter. This is reflected in Clause 1.1 of the DSRA Agreement",,,,,,

9.7. Furthermore, Clause 4(b) of the DSRA Agreement provides that in case of

default in repayment of interest or principal amount due, the Bank" ,,,,,,

would appropriate the amount available in the DSRA Account for servicing facility-I and facility-II.,,,,,,

9.8. Besides this, under Clause 10 of the DSRA Agreement, in the event of default, which included non-payment of instalment/interest and non-" ,,,,,,

maintenance of DSRA amount in the DSRA Account, the Bank could cancel the entire loan/facility and call upon Siti to repay the entire outstanding" ,,,,,,

amount under facility-I and/or facility-II within 30 calendar days or such period as may be prescribed by the Bank.,,,,,,

9.9. Likewise, if the recitals of DSRA Account along with relevant clauses were read holistically, it would be clear that the Bank could not only" ,,,,,,

modify the amount of credit balance that was required to be maintained in the DSRA Account but could also call upon Zee to pay the entire.,,,,,,

accelerated amount. In this behalf, reliance was placed on recital 2 and Clause 2, 4, 6, 7, 9, 11, 20 and 24 of the DSRA Guarantee Agreement." ,,,,,,

10. Siti, according to the Bank, since November 2018, had committed various defaults which included delay, in servicing interest since June 2019;" ,,,,,,

failure to maintain DSRA amount since November 2019; failure to perfect security since November 2018; and occurrence of downgrading since April ,,,,,,

2019 â?" which had led to the issuance of a notice dated 02.03.2020 to Zee in its capacity as the guarantor. Reference, in this behalf, was made to the" ,,,,,,

correspondence which was exchanged thereafter [to which I have made a reference above] which, ultimately, ended with the impugned demand" ,,,,,,

notice dated 01.10.2020. Furthermore, to demonstrate the admission of liability by Zee, reliance was placed on the notes to accounts appended to the" ,,,,,,

standalone financial results for the quarter and half year ending on 30.09.2020 and the e-mail dated 05.10.2020 which was addressed by Siti to Zee.,,,,,,

Analysis and Reasons: - ,,,,,,

11. Having heard learned counsels for the parties and perused the record, what emerges and that which is not in dispute is as follows." ,,,,,,

11.1. Term loan of Rs. 400 crore was sanctioned in favour of Siti in the form of facility-I and facility-II. Under facility-I, a term loan to the extent of" ,,,,,,

250 crores was sanctioned while under facility-II, a term loan to the extent of Rs. 150 crores was sanctioned with a BG sub-limit of Rs. 95 crores." ,,,,,,

The terms and conditions agreed to between the Bank and Siti for servicing the

debt were captured in the Hypothecation Agreement/loan agreement,,,,,,
and the DSRA Agreement. The loan transaction was secured inter alia via the DSRA Guarantee Agreement executed between the Bank and Zee.,,,,,,

11.2. The impugned demand letter dated 01.10.2020 pertains to facility-II. Via the said demand letter, the Bank has not only terminated facility-II but",,,,,,

has also called upon Zee to pay the accelerated amount i.e. the entire principal amount i.e. Rs. 83,08,00,000/- along with interest, default interest and",,,,,,

other charges. As on the date of issuance of the aforementioned notice, the demand was pegged at Rs. 83,70,14,289/-." ,,,,,,

11.3. The amount by which there is a shortfall in the DSRA amount [as on 01.09.2020] was an amount of Rs. 1,96,17,865.75/-." ,,,,,,

11.4. Zee claims that its liability under the DSRA Guarantee Agreement is limited, at present, if at all, to make up the shortfall in the DSRA amount" ,,,,,,

i.e. Rs. 1,96,17,865.75/-." ,,,,,,

12. Therefore, as noted right at the outset, what is required to be ascertained is whether this contention of Zee is borne out from the terms of the" ,,,,,,

DSRA Guarantee Agreement? ,,,,,,

13. The answer to the aforesaid issue lies in ascertaining the intent of the parties at the time when the agreement was arrived at qua the grant of the ,,,,,,

aforementioned facilities. Since the transaction has been reduced to writing, the intention of the parties can only be gathered from the provisions made" ,,,,,,

in the documents generated in that behalf. Thus, in chronological sequence, the first document which would have to be looked at would be the 1st" ,,,,,,

sanction letter [the 2nd sanction letter has no bearing on the instant case]. A perusal of the 1st sanction letter would show that the loan was disbursed ,,,,,,

to Siti, which was guaranteed by Zee, based on a representation that both companies were promoted by the Essel Group/Dr. Subhash Chandra, in" ,,,,,,

which, the majority ownership (more than 50% of the equity) or management control vested in Dr. Subash Chandra and Sons. [See: Annexure I of the" ,,,,,,

1st sanction letter]. ,,,,,,

13.1. As per the 1st sanction letter, Siti was required to repay the principal amount concerning facility-II in eight quarterly instalments of Rs. 18.75" ,,,,,,

crores commencing from 30.09.2021 and ending on 30.06.2023. ,,,,,,

13.2. Siti was required to maintain upfront DSRA equivalent to subsequent one quarter's interest in the form of fixed deposit with the lender ,,,,,,

throughout the tenor of the facility. Furthermore, Siti was also required to create DSRA equivalent to the next principal repayment for the quarter, 10",,,,,,

calendar days prior to each principal repayment due date. As agreed, the Bank would have a lien on DSRA. Besides this, the Bank was given the",,,,,,

right to utilise DSRA in case of non-payment or interest/principal by Siti. In case of any dip in the DSRA, Siti was required to immediately replenish",,,,,,

the same. To secure the facilities given to Siti, it was required to obtain a revolving DSRA guarantee (backed by a specific board resolution) from Zee",,,,,,

which would confirm that in the event of any shortfall in the maintenance of DSRA for the facility, the same shall be replenished and maintained by",,,,,,

Zee, albeit, throughout the tenure of the facility. Additionally, the Bank was given the right to call upon Zee to maintain DSRA under the revolving",,,,,,

DSRA guarantee whenever there was a shortfall in the maintenance of DSRA for the facility. Importantly, it was stipulated that DSRA guarantee",,,,,,

would remain valid until the dues under facility-II and facility-IIA were completely paid off. Siti was required to obtain a revolving DSRA guarantee,,,,,,

prior to the first utilisation date, which was the date on which various tranches of monies under each facility were disbursed." ,,,,,,

13.3. Amongst other terms and conditions, the 1st sanction letter also provided for events of default. The clause concerning the events of default inter",,,,,,

alia vested, in the Bank, the right to recall the ""entire loan outstanding"" [with the added condition that it would make the entire amount repayable",,,,,,

immediately] when any one of the following events occurred i.e. failure by Siti to pay any amount due and payable under the facility on the due date,,,,,,

and/or failure to maintain DSRA.,,,,,,

13.4. On the occurrence of events of default, [except where there was a payment default where no cure period was provided]; a cure period of 30",,,,,,

days had to be given to Siti. Immediately after the expiry of the cure period or in the case of payment default, where no cure period was required to",,,,,,

be given, the Bank was given the right to inter alia recall the entire facility and enforce guarantee/security." ,,,,,,

13.5. It is in this backdrop, that one has to view the provisions made in the DSRA Agreement and the DSRA Guarantee Agreement. The DSRA",,,,,,

Agreement, in the sense, captured the obligations of Siti towards the Bank and, hence, in Recital B alluded to the fact that ""one of the conditions"" of",,,,,,

the sanction of the facility (which was sanction of the term loan of Rs. 400 crores [See Recital A of the DSRA Agreement.]) was that Siti would,,,,,,

open DSRA Account in the Bank in which it was to deposit and maintain DSRA amount which would be utilised to discharge Siti's dues including,,,,,,

instalments of principal and interest due and payable from time to time.,,,,,,

13.6. It is in this background that the definitions of interest DSRA account, and DSRA amount provided what would be the minimum amount that was",,,,,,

required to be made available in the DSRA Account till the final settlement date. The expression used in the aforementioned terms to reflect this intent,,,,,,

was "not less than",,,,,,

"Interest DSRA Amount", means the amount to be deposited and maintained by Company into the DSRA Account, which amount, till the Final",,,,,,

Settlement Date, shall not be less than the funds equivalent to one quarter interest payable under the Facility for each ensuing Quarter.",,,,,,

"DSRA Amount", means the amount to be deposited and maintained by Company into the DSRA Account, which amount, till the Final",,,,,,

Settlement Date, shall not be less than",,,,,,

a. For facility of Rs. 250 crore, it shall not be less than the funds equivalent to one quarter interest payable under the Facility for each ensuing Quarter;",,,,,,

b. For Facility of Rs. 150 crore, it shall not be less than the funds equivalent to one quarter interest payable under the Facility for each ensuing Quarter",,,,,,

and next principal repayment for the ensuing quarter. DSRA equivalent to next principal repayment for the ensuing quarter to be created 10 calendar,,,,,,

days prior to each principal repayment due date.",,,,,,

13.7. Since this obligation of maintaining the minimum amount in the DSRA Account was required to be borne by Siti, till the entire amount was paid, it",,,,,,

would be relevant to also set forth hereafter the definition of the term final settlement date.,,,,,,

"Final Settlement Date shall mean the date on which the said Dues have been irrevocably and unconditionally paid and discharged to the",,,,,,

satisfaction of the Bank and a confirmation in writing to this effect has been given by the Bank to Company;",,,,,,

13.8. Likewise, it would be relevant to advert to the definition of DSRA Account as well.",,,,,,

"DSRA Account means the non-interest bearing current account in the name of

_____ bearing A/c No. _____, opened and maintained by" ,,,,,,

Company with the branch of the Bank situated at _____" ,,,,,,

13.9. Insofar as the obligation undertaken by Siti to maintain minimum DSRA amount in DSRA Account and the utilisation of the money lying therein ,,,,,,

by the Bank, in case of failure of Siti to repay amounts on the due date, the provision regarding this aspect was made in Clause 4 (a) and (b) of the" ,,,,,,

DSRA Agreement. A similar provision, in this behalf, in the form of Siti's undertakings is set forth in Clause 5 (a) and (b) of the DSRA" ,,,,,,

Agreement. ,,,,,,

4. Deposit of the DSRA Amount in the DSRA Account and the utilization thereof. Company hereby agrees and confirms as follows: ,,,,,,

a) The DSRA Account shall be funded by the Borrower from time to time so as to ensure that the funds in the DSRA Account are not at any point of ,,,,,,

time less than the DSRA Amount; ,,,,,,

b) In the event of non payment/default by Company on the respective due date(s) for payment of such said Dues and/or such instalment in terms of ,,,,,,

the Finance Documents, Bank shall be forthwith unconditionally entitled to debit, and thereafter appropriate and set off the monies lying to the credit of" ,,,,,,

the DSRA Account pursuant to the one time irrevocable debit authority submitted by Company to the Bank, (more particularly in the format" ,,,,,,

mentioned in Schedule-I), without execution of any further document and without any demur, reservation, contest or protest, whatsoever, on the part" ,,,,,,

of Company and without seeking any further consent from or giving any notice to Company, for an amount equivalent to such Dues and/or such" ,,,,,,

instalment;" ,,,,,,

14. In sum, Siti was required to maintain, not less than the stipulated DSRA amount, in the DSRA Account, until all dues under the facilities had been" ,,,,,,

paid and discharged to the satisfaction of the Bank. The satisfaction of the Bank was to be reflected in the form of confirmation in writing to that ,,,,,,

effect. ,,,,,,

14.1. Therefore, the DSRA Guarantee Agreement and the provisions made therein have to be examined in the backdrop of the aforementioned" ,,,,,,

documents i.e. the sanction letters [in particular, the 1st sanction letter] and the DSRA Agreement. The argument of Mr. Kaul that the liability of Zee" ,,,,,,

as a guarantor was limited to ensuring that the DSRA Account, had a credit balance, at all given times, equivalent to one quarter's interest for",,,,,,

facility-II and a further amount equivalent to one quarter principal instalment, which was to be maintained at least 10 calendar days prior to each",,,,,,

principal repayment due date, misses the point that it was only one facet of Zee's liability; an aspect which is evident on a plain reading of both the",,,,,,

Recitals and terms of the DSRA Guarantee Agreement itself. I say this without using the crutch of a well-established principle which is that if the",,,,,,

operative part of an agreement is clear, and unambiguous, it is treated as expressing the intention of the parties and thus, prevails over a possible",,,,,,

contrary intention emerging from the reading of the Recitals. [See: Escorts Limited vs. G.K. Automobile, 2006 SCC OnLine Del 164].",,,,,,

8. The proposition that the recitals do not control the operative part of an instrument is further fortified by a reference to the following",,,,,,

decisions:",,,,,,

1. *Srish Chandra Sen & Others v. Commissioner of Income-tax*, AIR 1961 SC 487",,,,,,

2. *Raja Rajinder Chand v. Mst. Sukhi* AIR 1957 SC 286",,,,,,

3. *Lalit Mohun Singh Roy v. Chukkun Lal Roy & Others*, 24 Indian Appeals 76",,,,,,

9. It is well established that where the operative part is clear, it is treated as expressing the intention of the parties and prevails over any contrary",,,,,,

intention afforded by the recitals (see: Halsbury's Laws of India Vol 9 page 559).
",,,,,,

14.2. Thus, a careful perusal of Recital 2 and Recital 3 of the DSRA Guarantee Agreement [on which much emphasis was laid by Mr. Kaul] would",,,,,,

show that the liability to maintain DSRA amount in the DSRA Account was undertaken by Siti till the repayment of the entire dues outstanding against",,,,,,

facility-II (which included the BG sub-limit) to the satisfaction of the Bank; an obligation which Zee had guaranteed. Furthermore, based on the",,,,,,

request of Zee, the Bank had agreed to lend monies to Siti. Therefore, given the backdrop of these Recitals, if one were to now examine various",,,,,,

clauses in the DSRA Guarantee Agreement, it would become clear that the liability of Zee extends beyond its obligation to maintain the minimum",,,,,,

credit balance equivalent to one quarter's interest and one quarter's principal instalment, at least 10 calendar days prior to the due date.",,,,,,

2. One of the conditions for the grant of the Term Loan II including BG sub-limit is that the Borrower shall maintain a Debt Service Reserve

account (DSRA) wherein the credit balance at all times till the repayment of the Term Loan II (including BG sub-limit) to the satisfaction of the Bank,

shall be equal to one quarter's interest for Term Loan II (to be maintained from the date of disbursement of the loan) and a further amount equal to

one quarter principal instalment (to be maintained atleast 10 calendar days prior to each principal repayment due date).

3. The Guarantor has agreed to guarantee that the Borrower shall maintain the credit balance in the OS RA as more fully specified in recital 2,

above,

At the request of the Guarantor, the Lender has agreed to make to the Borrower, disbursement(s)/interim disbursement(s) from out of the Term Loan

II (including BG sub-limit).

14.3. In this context the latter part of Clause 4 (the extract of which is set out hereafter and duly underlined), when read in consonance with the debt

confirmation letters [see paragraph 3.4 above] would clearly demonstrate that Zee has, in fact, guaranteed the entire debt under facility-II and not just

the minimum DSRA amount to be maintained in the DSRA Account.

4. The Guarantor hereby confirms, agrees and guarantees that the "Debt Service Reserve Account" opened to be opened by the Borrower with

the Lender shall have a credit balance at all times equivalent to one quarters' interest payable for the outstanding Term Loan II including BG sublimit,

(to be created upfront from the date of disbursement and in proportion to disbursement amount under of the Term Loan II and to be maintained during

the tenor of Term Loan II) and 1 (One) Quarter Principal Instalment for outstanding Term Loan II (to be maintained atleast 10 calendar days prior to

each principal repayment date). Notwithstanding anything contained in this Clause 4, the aggregate amount guaranteed by the Guarantor under this

document shall be limited to the DSRA balances/ amounts to be maintained by the Borrower in relation to the aggregate outstanding amounts under

said Term Loan II. The Guarantee for Term Loan II shall be as mentioned in the Schedule hereto and as confirmed by the Guarantor, from time to

time, in the format given in Schedule hereunder.

[Emphasis is mine],

14.4. This is also apparent from the provisions of Clause 9 which empowers the Bank to invoke the guarantee furnished by Zee and recover the amount which has become due from Siti along with ancillary and incidental cost upon failure of Siti to maintain the DSRA Account or comply with the terms specified from time to time. Likewise, Clause 11 of the DSRA Guarantee Agreement provides that Zee's obligation under the said guarantee shall be continuing in nature and shall cover every default of Siti in respect of maintenance of the DSRA Account. More importantly, Clause 20 and 24 of the DSRA Guarantee Agreement respectively provide that to give effect to the guarantee furnished by Zee, the Bank would act as though Zee was the principal debtor and that the guarantee shall remain valid, binding and operative until repayment in full of all monies due to the Bank concerning facility-II under the loan agreement. Besides this, under Clause 6 of the DSRA Guarantee Agreement, the Bank could modify the terms of maintenance of the credit balance in the DSRA Account unilaterally without the consent of Zee. To my mind, the notice of modification of the terms of maintenance of credit balance in the DSRA Account and acceleration of loan facility was given by the Bank to Zee via communications dated 02.03.2020, 05.03.2020 and 21.04.2020.

9. The Guarantor hereby confirms, agrees and guarantees that in the event of the failure of the Borrower to maintain the DSRA or comply with the terms specified from time to time, the Lender shall be at liberty to invoke this guarantee and recover the amount as become due from the Borrower from the Guarantor along with all ancillary and incidental cost.

11. The Guarantor hereby confirms, agrees and guarantees that this deed of guarantee shall be continuing in nature, can be invoked from time to time (without any restriction on the number of times the same can be invoked) and cover every default of the Borrower made in respect to the maintenance of the DSRA with the Lender. Any payment or part payment by the Borrower towards any due or claim of the Lender shall not discharge the Guarantor from its liability. This deed of guarantee shall remain in force till repayment of the entire Term Loan II (including BG sub-limit) to the satisfaction of the Lender. The Guarantor shall be discharged only upon a certificate issued to that effect by the Lender.

20. To give effect to this Guarantee, the Lender may act as though the

Guarantors were the principal debtors to the Lender.â??" ,,,,,,

24. This Guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with the Lender' by the Borrower and ,,,,,,

shall be valid and binding on the Guarantor and operative until repayment in full of all monies due to the Lender in relation to Term Loan II under the ,,,,,,

Loan Agreement. ,,,,,,

â??6. The Guarantor hereby confirms and agrees that the Lender shall at its sole discretion be entitled to modify the terms of maintenance of credit ,,,,,,

balance in DSRA without the specific consent of the Guarantor and all rights to the contrary available to the Guarantor under law are hereby waived ,,,,,,

by the Guarantor and in case of any subsequent amendment(s) or modification(s) in the terms and conditions regarding the maintaining of DSRA in ,,,,,,

the sanction letter, the recital 2 shall stands modified to mean the revised understanding / terms specified by the Lender.â??" ,,,,,,

14.5. Via the aforementioned communications, Zee was foretold that because of Siti's defaults which included delay, in servicing interest dues and" ,,,,,,

failure to maintain the DSRA amount in the DSRA Account, the Bank would be constrained to not only modify the terms of maintenance of credit" ,,,,,,

balance in the DSRA Account [without its consent] but would also have to accelerate the facility i.e. demand the entire principal amount along with ,,,,,,

interest charges etcetera [unless corrective steps were taken]. ,,,,,,

14.6. The Bank's communication dated 01.09.2020 which informed Zee that an event of default had occurred and therefore, it was required to pay the" ,,,,,,

entire sum due under facility-II followed by the impugned demand notice dated 01.10.2020 was a culmination of its earlier communications on the ,,,,,,

issue. Thus, the argument advanced on behalf of Zee that its liability under the DSRA Guarantee Agreement was limited to the payment of one" ,,,,,,

quarterâ??s interest qua facility-II and a further amount equivalent to one quarterâ??s principal instalment, albeit, on the stipulated due date, in my" ,,,,,,

view, is misconceived." ,,,,,,

14.7. Zee, all along, guaranteed that its liability under the DSRA Guarantee Agreement shall remain alive until the entire dues were paid to the" ,,,,,,

satisfaction of the Bank. The provisions of Clause 7 of the DSRA Guarantee Agreement further substantiate this aspect of the matter. ,,,,,,

7. The Guarantor hereby confirms and agrees that in the event of the failure or default of "the Borrower" in repayment of any single instalment",,,,,,

amount or other interests, charges and monies due in relation to Term Loan II under the loan agreement, sanction letter(s) and other security",,,,,,

documents to "the Lender", the said due amount shall be adjusted from the DSRA along with such other incidental and other charges as agreed",,,,,,

between "the Borrower" and "the Lender" and the Borrower shall immediately replenish the balance in the DSRA so as to conform to the balance",,,,,,

requirements as more fully specified in recital 2 above. To the extent that the Borrower shall be unable to maintain the credit balance as required in,,,,,

recital 2, the Guarantor agrees and guarantees to replenish the DSRA immediately at the request of the Lender so as to ensure that the balance",,,,,,

requirements as stated in recital 2 are maintained at all times. It is being understood and agreed by the parties that this guarantee can be invoked any,,,,,

number of times for full or partial amounts, so as to conform to DSRA terms till the entire Term Loan II is repaid full to the satisfaction of the Lender",,,,,,

by the Borrower.â??,,,,,

[Emphasis is mine],,,,,,

14.8. Thus, Clause 7 of the DSRA Guarantee Agreement inter alia empowered the Bank to invoke the bank guarantee any number of times for full or",,,,,,

any part of the amounts to conform to DSRA terms till the entire debt was defrayed to the satisfaction of the Bank.,,,,,,

14.9. The matter can be looked at from another angle, which is, as to how the parties construe the terms of the agreement. In this context, it is",,,,,,

relevant to note that in the notes to the account appended to the standalone financial results of Zee for the quarter and half year ending on 30.09.2020,",,,,,

the following has been mentioned.,,,,,,

8. During earlier years, the Company had provided commitments for funding shortfalls in Debt Service Reserve Account (DSRA guarantee) in",,,,,,

relation to certain financial facilities availed from banks by Siti Networks Limited (SNL), a related party, including certain facilities availed when the",,,,,,

cable business undertaking was part of the Company before its demerger into SNL. The loan outstanding of SNL as at 30 September 2020 which is,,,,,

backed by DSRA guarantee is Rs 20,590 lakhs. On account of defaults made in repayments by SNL, during the quarter the Company has received",,,,,,

demand notices/communications from the banks/representatives calling upon the Company to honor the obligations under the DSRA guarantee.,,,,,,

The Company has also been informed that SNL is in active discussions with the banks for renegotiating the repayment terms and also.,,,,,,

restructuring/rescheduling of its' facilities. The Company has also obtained legal advice about its obligations under the terms of the DSRA guarantee.,,,,,,

Additionally, the Company has undertaken credit risk evaluation of SNL, including future cash flow assessments." ,,,,,,

Based on the aforesaid, as a matter of abundant caution, the Company has estimated and accounted the liability aggregating Rs. 9,710 lakhs as on 30" ,,,,,,

September 2020. Further, the Company has provided for the receivable from SNL of the aforesaid amount and disclosed the same as 'Exceptional' ,,,,,,

item' ,,,,,,

The Company has collected the receivables relating to the revenue accounted for the half-year ended 30 September 2020 and as a matter of abundant.,,,,,,

caution has also provided for the overdue trade receivables from SNL as at 30 September 2020 aggregating Rs. 8,120 lakhs.â??" ,,,,,,

15. It is pertinent to note that the financial statement was signed on behalf of the board of directors of Zee by Mr. Puneet Goenka, managing director" ,,,,,,

and CEO on 02.11.2020 after the demand notice dated 01.10.2020 had already been served upon Zee. Likewise, in response to the mail of the Bank" ,,,,,,

dated 05.10.2020 calling upon Siti to share its debt position as on September 2020, Siti responded, via an e-mail of the same date. In that e-mail, Siti as" ,,,,,,

per its understanding, disclosed, what according to it were amounts that had to be paid by Zee and as well as that portion which did not fall to the" ,,,,,,

share of Zee. Against Zee, Siti showed that it owed the Bank Rs. 83.10 crores while the debt which was not owed by Zee was quantified at Rs. 55.40" ,,,,,,

crores. Thus, according to Siti, as on September 2020 the principal amount outstanding, under both the facilities was Rs. 138.50 crores." ,,,,,,

15.1. The argument advanced on behalf of Zee that both the financial statement as well as the e-mail of Siti could not be construed as an admission of ,,,,,,

liability could have been sustained if these documents did not have a context or a backdrop. When these documents are examined in the context of the ,,,,,,

sanction letter, the DSRA Agreement and the DSRA Guarantee Agreement as also the correspondence which largely emanated from the Bank" ,,,,,,

without a response from Zee, it is quite clear that Zee was always aware of the fact that if a default was made by Siti qua facility-II, it could be called" ,,,,,,
upon to pay the accelerated amount.,,,,,,

16. Given these circumstances, I am not persuaded to hold that Zee has been able to make out a prima facie case for grant of ad-interim injunction." ,,,,,,

Furthermore, if I were to grant an injunction, as sought by Zee, it would debilitate the Bank's ability to take recourse to remedies which are" ,,,,,,

available to it in law for recovery of its dues. Therefore, in my opinion, the balance of convenience would tilt in favour of the Bank. I am also not" ,,,,,,

convinced that irreparable injury or harm would be caused to Zee as, at the end of the day, refusal of injunction would involve outflow of funds, save" ,,,,,,

and except, the apprehension of Zee that the Bank would communicate the information to the stock exchanges, credit information companies, and" ,,,,,,

credit rating agencies. Insofar as the apprehension with regard to the flow of information to the stock exchanges, credit information companies, and" ,,,,,,

credit rating agencies is concerned, that is a risk that Zee ought to have factored when it took the decision to enter into the DSRA Guarantee" ,,,,,,

Agreement. Since I have, as indicated above, not been able to persuade myself that Zee has established a prima facie case, this aspect cannot be a" ,,,,,,

factor which would have me rule in favour of Zee. In any case, for Zee to obtain an injunction, it was required to satisfy the Court with regard to all" ,,,,,,

three tests i.e. prima facie case, balance of convenience and irreparable harm and injury." ,,,,,,

17. That being said, the contention advanced by Mr. Nayar that this Court has no jurisdiction in the matter is not sustainable. The reliance placed by" ,,,,,,

him on the judgement of the Supreme Court rendered in South East Asia Shipping case is distinguishable on facts. That was a case wherein ,,,,,,

jurisdiction was sought to be triggered of the concerned Court based on a bank guarantee executed by an independent third party; an entity which had ,,,,,,

nothing to do with the underlying contract executed between South East Asia Shipping Co. Ltd. and Nav Bharat Enterprises (P) Ltd. ,,,,,,

18. In this case, the guarantor is inextricably linked to the main contract and thus, the place of execution of the DSRA Guarantee Agreement would" ,,,,,,

form a part of the cause of action. This distinction becomes clear if were to peruse paragraph 3 [placitum-H at page 444-445] of the judgement in ,,,,,,

South East Asia Shipping case. Admittedly, the DSRA Guarantee Agreement was executed in New Delhi." ,,,,,,

19. Insofar as the judgements cited by Zee are concerned, which are referred to in paragraph 7 above, one cannot quibble with the propositions" ,,,,,,

articulated therein. The foregoing discussion would show that whether one looks at the plain terms of the DSRA Guarantee Agreement, in isolation or" ,,,,,,

in conjunction with the documentation which led to its execution [i.e. the 1st sanction letter, and the DSRA Agreement], it leads one to the conclusion," ,,,,,,

at least at this stage, that Zee's liability was not limited to the maintenance of credit balance equivalent to one quarter's interest and one" ,,,,,,

quarter of the principal instalment payable on the due date. ,,,,,,

20. Needless to add, nothing stated hereinabove will impact the final adjudication of the suit." ,,,,,,

Conclusion: - ,,,,,,

21. Thus, for the aforesaid reasons, the captioned application is dismissed." ,,,,,,

CS (COMM) 500/2020 ,,,,,,

22. List the matter before the Court on 15.03.2021 for further proceedings. ,,,,,,