



OCD-5

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE**

**APOT/330/2025
WITH CS-COM/125/2025
IA No.GA-COM/1/2026**

AVISHEK ROY AND ORS.

-VERSUS-

INDIAN BANK AND ORS.

Present :

The Hon'ble Justice Debangsu Basak

-And-

The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant : *Mr. Rudraman Bhattacharyya, Sr. Adv.*
Mr. Akash Munshi, Adv.
Mr. Satyaki Mukherjee, Adv.
Mr. Harsh Tiwari, Adv.
Mr. Souvik Kundu, Adv.

For the Respondent No.1 : *Ms. Deblina Lahiri, Adv.*
Mr. Mrinmoy Chatterjee, Adv.

For the Respondent No.2 : *Mr. Sailendra Kr. Tiwari, Adv.*
Mr. Shambhu Mahato, Adv.
Ms. Muskan Jalan, Adv.

HEARD ON : 30.01.2026

DELIVERED ON : 30.01.2026

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the plaintiff and directed against the order dated December 8, 2025 passed in IA No.GA-COM/1/2026 filed in CS-COM/125/2025.



2. By the impugned order, learned single Judge refused to grant interim protection to the plaintiff.
3. Learned senior advocate appearing for the appellants submits that, the appellants were the directors of a corporate-debtor. Such corporate debtor enjoyed certain credit facilities from banks, being the respondent nos.1 and 2 herein. Learned senior advocate appearing for the appellants submits that, the corporate debtor was enjoying various contracts with different third parties. The respondent nos.1 and 2 engineered revocation of such contracts by the third parties causing loss to the corporate debtor. In respect of some of such contracts, a suit was filed by the corporate debtor being MS 35 of 2019 pending before the learned Civil Judge, Senior Division, Port Blair.
4. Learned senior advocate appearing for the appellant submits that, a proceedings under Insolvency & Bankruptcy Code 2016 was initiated as against the corporate debtor before the National Company Law Tribunal (NCLT). The corporate debtor ultimately suffered an order of winding up. The respondent no.3 is the liquidator of such corporate debtor. He refers to a minutes of the meeting held by the respondent no. 3 amongst the Stakeholders Consultation Committee. He submits that, in such Stakeholders Consultation Committee a decision was taken which tantamounts to dereliction of duty of the respondent no.3. He refers to Section 35(1)(k) of the Insolvency & Bankruptcy Code 2016 in this regard.



5. Learned senior advocate appearing for the appellant submits that, the creditors persuaded the respondent no. 3 to withdraw the suit filed by the corporate debtor. He refers to the order by which the suit was withdrawn. He submits that, if the suit was allowed to be continued with, then, there was every possibility of the corporate debtor receiving its claim made in such suit. The respondents impaired the rights of the appellants as guarantors by withdrawing MS 35 of 2019.
6. Relying upon **1968 SCC Online J&K 4 (Sardar Kahn Singh Vs. Tek Chand Nanda & Anr.)** and **1980 (4) SCC 516 (State Bank of Saurashtra Vs. Chitranjan Ranganath Raja & Anr.)** learned senior advocate appearing for the appellant submits that, the respondents acting in bad faith with regard to the securities and the claim of the corporate debtor against the third party, impaired the right of the guarantors to step into the shoes of the corporate debtor. By virtue of Section 139 of the Indian Contract Act, 1872, the appellants stood discharged from their liabilities to the respondent nos. 1 and 2.
7. Respondent Nos. 1 and 2 are represented. None appears for the respondent no. 3.
8. Appellants claim themselves to be the directors of a corporate debtor who suffered an order of winding up after the attempt at corporate insolvency resolution failed. Respondent no. 3 was appointed as the liquidator of such corporate debtor. A Stakeholders Consultation Committee was formed. A meeting of such Stakeholders Consultation Committee was held where the appellants and the respondents were present. In such



meeting, it was decided that, the respondent no. 3 will withdraw MS No. 35 of 2019 pending before the learned Civil Judge, Senior Division, Port Blair.

9. Consequent upon such resolution of the Stakeholders Consultation Committee, respondent no. 3 proceeded to and obtained withdrawal of such suit. The learned Civil Judge, Senior Division, Port Blair allowed the withdrawal of the suit by the order dated December 2, 2025.
10. Issue as to whether or not such action of the respondent no. 3 as the liquidator of the company in liquidation sounds in breach of Section 35(1)(k) of the Code of 2016 or not need not be entered into by a suit Court or by us on appeal, as the same if raised may be considered by the NCLT where the liquidation proceedings are pending. We make no comments with regard thereto.
11. So far as, the discharge of liability is concerned, two authorities are cited before us. Both authorities are on a final hearing of the concerned suit. Facts and circumstances of those two authorities are completely different to those pending before us. In neither of those authorities namely **Sardar Kahn Singh** as well as **Chitranjan Ranganath Raja & Anr.(supra)** the interplay of the Indian Contract Act, 1872 and the Code of 2016 were considered, as it was not required.
12. In the facts and circumstances of the present case, the corporate debtor in question is in liquidation under the provisions of the Code of 2016. The appellants before us are the guarantors of the company in liquidation. The liquidation proceedings are under the Code of 2016. The



liability of a guarantor in respect of a debt of the corporate debtor does not stand reduced or extinguished upon an insolvency resolution plan being approved in respect of a corporate debtor under the Code of 2016. Purely on the ground that the company is in liquidation under the Code of 2016 a guarantor to the credit facilities of the company in liquidation would stand substituted in place and stead of the company in liquidation and consequently, the guarantor would be entitled to seek an order of injunction as prayed for is debatable. It is equally debatable as to whether any injunction qua guarantor stand breached by a liquidator withdrawing a suit filed by a company in liquidation, in the requirement to do so being approved in a Stakeholders Consultation Committee, under the Code of 2016.

13. We find no ground for interference with regard to the discretion exercised by the by the learned Single Judge in refusing to pass interim protection in favour of the appellant.
14. APOT/330/2025 along with all connected applications are dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

15. I agree.

(MD. SHABBAR RASHIDI, J.)