Present:

Mr. Justice Md. Rezaul Hasan
and
Mr. Justice Biswajit Debnath
and
Mr. Justice Md. Abdul Mannan.

Civil Rule No. 761(FM) of 2022.
Arising out of F.M.A.T. No. 412 of 2022 and F.M.A. No. 42 of 2024.

SolarEn Foundation and others
.... Plaintiff-Petitioner.
-Versus-
Infrastructure Development Company Limited (IDCOL) and others.
Defendant-opposite parties.

Mr. Fida M. Kamal, Senior Advocate with
Mr. Kamal-ul-Alam, Senior Advocate with
Mr. Probir Neogi, Senior Advocate with
Mr. A.S.M. Shahriar Kabir, with
Mrs. Hosne Ara Begum with
Mr. Al Amin, Advocates.
.... For the Plaintiff-Petitioners.
Mr. Md. Asaduzzaman, Senior Advocate with

Mr. Mohammad Bakir Uddin Bhuiyan with

Mr. S.M. Iqbal Bahar Bhuiyan with

Mr. Mohammad Roni Mahmud with

Mr. Md. Shamsher Mobin with

Mr. Abu Sufiyan with

Mr. K.M. Ashbarul Bari, Advocates.

.....For the Defendant-Opposite party No.1.

Heard on 12.02.2025, 13.02.2025, 16.02.2025, 17.02.2025, 25.02.2025, 26.02.2025 and Judgment on 27.02.2025.

Md. Rezaul Hasan, J.

The supplementary affidavit do form part of the substantive petition.

2. This Rule has been issued, by a Single Bench of the High Court Division, calling upon the defendant-respondent-opposite parties to show cause as to why they should not be restrained by an order of injunction from further continued publication, adverse inclusion and circulation of classification status of the plaintiffs-applicants-petitioners as loan defaulters in the report of the Credit Information Bureau (CIB Report) of Bangladesh Bank, till disposal of the First Miscellaneous Appeal Tender No. 412 of 2022 and/or pass such other or further order or orders as to this Court may seem fit and proper.

3. Facts, relevant for disposal of this Rule, in brief, are that, the plaintiff-appellant-petitioners has filed a Title Suit No. 562 of 2022, before the Joint District Judge, 5th Court, Dhaka, under section 42 of the Specific Relief Act, 1877, against (1) Infrastructure Development Company Limited (IDCOL, Bangladesh Bank, the General Manager, Credit Information Bureau (CIB) of the Bangladesh Bank, the Standard Bank Limited, the Jamuna Bank Limited, and the EXIM Bank Limited, for declaration that, the plaintiffs are the agents of the defendant No. 1 (IDCOL) and is not their borrower, and for further declaration that, the publication, reporting, showing and circulating names of the plaintiffs as loan defaulters in the CIB

Report of Bangladesh Bank is illegal, mala fide and not binding upon them.

4. The case of the plaintiffs, in short, is that, the plaintiffs No. 1 is the expert in renewable energy sector in Bangladesh and has contributed towards the sustainable development of Bangladesh by innovating and implementing sustainable solar energy projects, and that the IDCOL has signed a contract with the plaintiff for implementing Solar House System (referred to as SHS) by installing solar systems in the households in the off grid area and that, the plaintiff No.1, to the entire satisfaction of the IDCOL, has implemented the said project, but the IDCOL has most illegally, placed the name of the plaintiffs in the list of Credit Information Bureau (CIB), hence the plaintiff has been compelled to file the instant suit. It has further been asserted that, the plaintiff did not obtain any loan facility under the SHS project. Hence, the transaction does not come within the purview of section 27KaKa of the Bank Companied Act, 1991, and their names are liable to be withdrawn from the list of the CIB Report. This suit has been filed on 27.11.2022. Then, on 28.11.2022, the plaintiff had filed a petition for temporary injunction, under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (the CPC), on similar averments as made in the plaint, and prayed for an order to restrain the defendants-opposite parties from further continued

adverse publication and reporting the names of the applicants in the CIB report of Bangladesh Bank.

5. On 29.11.2022, the trial court took up the injunction petition for hearing and has rejected the same, assigning the reason that the Article 41(1) of the Bangladesh Bank Order, 1972 (BBO, 1972), is bar to file the suit itself. Therefore, there was no scope to raise any question about the CIB report of the Bangladesh Bank and there was no legal scope to consider the petition for temporary injunction of the plaintiffs.

6. Being aggrieved by the said order dated 29.11.2022 of the trial court, the plaintiffs have preferred First Miscellaneous Appeal Tender No. 412 of 2022, along with an application for temporary injunction, before the High Court Division and a Single Bench, after hearing the petition for injunction, was pleased to issue the instant Rule and has also been pleased to pass an order of interim injunction, vide order dated 11.12.2022.

7. The defendant-Opposite Party No. 1(IDCOL) has appeared in the Rule on 28.08.2023 and the matter was also heard in part by the Bench concerned. In the course of hearing they filed an application, on 12.05.2024, before the Hon’ble Chief Justice of Bangladesh, having served notice upon the other side, alleging that, similar points of law, as raised in this Rule, were also raised before and decided by two Division Benches of the High Court

Division, reported in 72 DLR (HCD)744 as well as in a latter case, reported in 73 DLR (HCD) 554, taking different views as to whether the provisions of Article 41(1) completely debars the entertainment of any civil suit and at what stage of a suit the plaint can be rejected.

8. In the context of these conflicting views, the Hon,ble Chief Justice of Bangladesh has constituted this Full Bench, on 20.11.2024, for hearing and disposal of the instant Rule.

9. Learned Senior Advocates Mr. Fida M. Kamal, Mr. Kamal-ul-Alam and Mr. Probir Neogi, along with learned Advocates Mr. A.S.M. Shahriar Kabir, Mrs. Hosne Ara Begum and Mr. Al Amin, have appeared for the plaintiff-appellant-petitioners (the SolarEn). Having placed the petition for injunction and the impugned order dated 29.11.2022, they first of all submit that, a plain reading of Article 41(1) of the Bangladesh Bank Order, 1972 (BBO, 1972, in brief), makes it evident that it does not at all bar filing of a suit before the civil court, challenging publication of the plaintiffs name in the CIB report. They have strenuously argued that, the view taken in paragraph No. 34 of the case reported in 72 DLR 744 is the correct view on this issue. They contend that, the question of ‘good faith’ is a question of fact and this should be decided upon taking evidence in the suit. The learned Advocates have also pointed out that, for the view, taken in 73 DLR 554,

that a plaint can be rejected even before issuance of the summons, reliance was placed on AIR Cal 425, 54 DLR (AD) 125, 18 DLR 709 and 50 DLR 249. But, in none of these cases, the plaint were rejected before issuance of summons. Therefore, they maintain that, the view taken in judgment reported in 73 DLR 554, that a plaint can be rejected even before issuance of the summons, has been taken without proper appreciation of the facts of the cases referred to it by that Bench. As regards the stage for filing the petition for rejection of plaint, they submit that, the plaint has not been rejected in their case and their suit is pending in the court below. However, they empathically argues that, the plaintiff No,1 (SolarEn) is an agent of IDCOL and they are not borrowers. They assert that, the provisions of the clause numbers 2.03, 3.01, 3.02, 3.03, 3.06, 3.07 of the Participation Agreement dated 02.06.2011, signed between the plaintiff No. 1 (SolarEn) and IDCOL, clearly show that the plaintiff has acted as an agent of the IDCOL for implementation of the project SHS in their target area, based on foreign grants routed through IDCOL and was disbursed in foreign currency. The learned Advocates have cited 70 DLR (AD) 163: Sonali Bank and another Vs. Major Monjur Quader, and submit that, even if the plaintiff Nos. 2-10 were guarantors, however, as per this decision, they cannot be considered as defaulter-borrowers, as defined in section 5GaGa of the Bank

Companies Act, 1991 (BCA, 1991, in brief). The learned Advocates for the plaintiff-appellant next submit that IDCOL is neither a bank, nor a financial institution, for the purpose of section '27KaKa' of the BCA, 1991. Therefore, they contend that, the plaintiffs had successfully made out a prima-facie case before the trial court, but the trial court has utterly failed to appreciate the same and it has also failed to appreciate that the balance of convenience and inconvenience was in favour of granting the injunction and that the plaintiff-appellants would suffer irreparable loss and injury unless an order of injunction is granted. They sum up their submissions that this Rule has a clear merit and have prayed for making the Rule absolute.

10. Learned Senior Advocate Mr. Md. Asaduzzaman (Attorney General for Bangladesh) and learned Advocate Mr. Mohammad Bakir Uddin Bhuiyan, Mr. S.M. Iqbal Bahar Bhuiyan, Mr. Mohammad Roni Mahmud, Mr. Md. Shamsher Mobin, Mr. Abu Sufiyan and Mr. K.M. Ashbarul Bari have appeared on behalf of the defendant-respondent opposite party No. 1, IDCOL. They, having placed the counter affidavit and the documents annexed therewith, first of all submit that, the SolarEn has, in their letter dated 29.08.2016, addressed to the CEO of IDCOL (Annexure 3), clearly admitted that that they could not maintain their repayment schedule about the IDCOL loans and, having acknowledged their

liability as the borrower, they had also given a cheque to IDCOL for Tk. 1,75,00000.00, being 15 % of the overdue amount of Tk. 3,51,65,000.00. Next, referring to SolarEn's letter dated 24.10.2016, Annexure 3(1), letter dated 25.02.2019, Annexure 3(2), letter dated 24.10.2016 and 25.02.2019, Annexure 3(1) and 3(2), respectively, Mr. Asaduzzaman submits that, in these letters of SolarEn, addressed to IDCOL, request were made to reschedule their loan with IDCOL. Then, referring to another letter dated 30.06.2019 of IDCOL, Annexure 3(3), addressed to SolarEn, it was informed that the SolarEn's prayer for rescheduling the loan has been approved by IDCOL, he points out. He, therefore submits that, these correspondence marked and annexed as Annexure 3 series to the affidavit in opposition, clearly prove that the plaintiff No. 1, SolarEn, is the loanee of IDCOL (the defendant No. 1). He has next referred to the personal guarantees executed by the directors of SolarEn, annexed as Annexure-2 series to the counter affidavit, and submits that, in these guarantees, IDCOL has been shown as the lender, the SolarEn has been shown as the creditor and the plaintiff Nos. 2-9 have signed all these documents as sureties to repay the loan of the SolarEn. Therefore, he maintains that, all these plaintiffs are defaulter-borrowers, as defined in section '5GaGa' of the BCA, 1991. Hence, IDCOL has sent the CIB report rightly showing them as

the defaulter-borrowers to the Bangladesh Bank, as required of them by sub-section (1) of section '27KaKa', and Bangladesh Bank has published the same as required of it by sub-section (2) of section '27KaKa' of the BCA, 1991, read with Articles 43, 44, 45 of the BBO, 1972. As such, he argues that, the plaintiff-appellants did not have any prima-facie case as was found by the trial court. He empathically argues that, the suit itself is clearly barred by the provisions of Article 41(1) of the Bangladesh Bank Order, 1972, and this was the view taken by a Division Bench of the High Court Division in 73 DLR 554 at paragraph No. 4.22, which is the correct proposition of law, insists. He proceeds on that, BBO, 1972, is a special law and the bar against suit, imposed by it, is absolute. Hence, he asserts that, rejection of petition for injunction by the impugned order dated 29.11.2022 by the trial court is founded on a proper appreciation of law and facts and that does not call for any interference in the appeal pending before this Court. Consequently, this Rule has no merit and the same is liable to be discharged, he maintains. The learned Advocate has also raised the question of valuation of the suit and submits that, when there is an objective standard for valuation for the purpose of court fees and jurisdiction, the valuation of this suit has been made at Tk. 5,50,00,000.00, which is arbitrary and, on a proper valuation, this appeal should have been filed before a Division Bench of the

High Court Division. He continued that, the plaintiff did not come in clean hands, as is apparent form their conduct, and is not entitled to the relief of injunction. Next, having read over the Clause Nos. 2.01, 3.01, 3.03, 3.06, 3.07, 4.05, 4.08. 4.10 and 4.11 of the Participation Agreement dated 02.06.2011, he submits that, all these clauses clearly prove and establish the fact that IDCOL is the lender and SolarEn is the borrower. Then, having taken us to Annexure 7(1) of the supplementary affidavit, he submits that, Bangladesh Bank has granted license to the IDCOL on 05.09.1998 to act as a financial institution. He points out that, this loan has been disbursed in BDT, as per Clause 4.05(a) of the agreement, the reschedulement has been claimed and granted in BDT and the repayment has also been claimed in BDT. He, therefore, and submits that the contention that foreign grant was extended to SolarEn to implement its project is absolutely baseless and misleading. He concludes that, this Rule has no merit and prays for discharging the Rule.

11. We have heard the learned Advocates for both sides, perused the memo of appeal, the petition for injunction, impugned order dated 29.11.2022, the documents annexed to the petition, to the supplementary affidavit and to the counter affidavit. We have also consulted the relevant laws and the decisions cited before us, along with the decision reported in 72 DLR(HCD)(2020)744 and

73 DLR(HCD)554, and have noted the issues on which two Division Benches have differed in their opinions.

12. In 72 DLR, 744, it has been held that Article 41(1) does not create any bar in filing a suit challenging publication of the defendants name in the CIB report, by Bangladesh Bank, on the contrary, in 73 DLR 554, it has been opined that it debars such suits. Besides, in 72 DLR 744, it has been held that, plaint cannot be rejected before filing of the written statement, while in 73 DLR 554, it has been articulated that, a plaint can be rejected at the earliest opportunity, and, in a fit case, even after it has only been numbered and registered as a suit i.e. before issuance of the summons.

13. Although, in the case before us, plaint has not been rejected and the suit is pending before the lower court, however, in terms of the reference made to the Full Bench, we should address the aforesaid two issues, along with the issue as to whether Bangladesh Bank can be restrained, by an order of injunction, from publishing the CIB report, which is the main incentive in filing these suits. **Whether Article 41 of the BBO, 1972, debars civil suit**.

14. In order to decide as to whether Article 41 of Bangladesh Bank Order, 1972, is a bar or not, we need to go through Article 41 of the Bangladesh Bank Order, 1972, which reads as follows-

"41(1) No suit or other legal proceedings shall lie against the Bank or any of its officers for anything which is in good faith done or intended to be done in pursuance of Article 36 or Article 37 or Article 38 or Article 39 or Article 40 or in pursuance of the provisions of Chapter IV.

(2) No suit or other legal proceedings shall lie against the Bank or any of its officers for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of Article 36 or Article 37 or Article 38 or Article 39 or Article 40, or in pursuance of the provisions of Chapter IV." (emphasis supplied).

15. In the suit before us, as well as in the suits referred to in 72 DLR (HCD) (2020)744 and 73 DLR(HCD)554, no damage has been claimed against Bangladesh Bank. Therefore, Sub-Article (1) of Article 41 is relevant here, although both the Articles are couched in similar language. Hence, in some places, we have simply mentioned Article 41, instead of Article 41(1).

16. To arrive at our conclusion, we should read Article 41 from two angles, firstly, keeping the words 'good faith' in the provisions of Article 41 and secondly, by omitting the words 'good faith, in it. If we do not read 'good faith' in Article 41, then the bar is absolute. But, if we read 'good faith' in it, then the bar is qualified. In other words, in the latter circumstances, the plaintiff alleging 'malafide' or 'lack of good faith' in the actions complained of, to be done or intended to be done in pursuance of Article 36 to 40 or proviso to Chapter IV of the Bangladesh Bank

Order, 1972, should have right to adduce evidence in support of his case, in which case, however, the burden to prove 'mala fide' or the 'lack of good faith' shall squarely lie on the plaintiff.

17. *To sum up the position, Article 41(1) will not be a bar to the filing a suit, provided that the averments made in the plaint clearly discloses a case of 'mala fide' or 'lac of good faith' on the part of Bangladesh Bank, and that the relief claimed has been properly valued for the purpose of jurisdiction and court fees, and that proper court fees has been paid. However, this will not make the pliant immune from rejection under Order 7, Rule 11 of the CPC, in an appropriate case.*

18. However, we should make it clear that, a defaulter borrower, in respect of whom the proviso to sub-section (3) of section 27KaKa will apply, must, at first, file an application before the Bangladesh Bank and if his application is rejected then only he can be treated as a person aggrieved and can be said to have a causes of action to file a suit before the civil court challenging the CIB report concerning him. Otherwise, the proviso to sub-section (3) of section 27KaKa 'shall' be a bar to directly file a suit challenging a CIB report by the defaulters borrowers meant in the said proviso.

Stage for rejection of plaint.

19. As regards the stage, when a plaint can be rejected or when application for rejection can be filed, it is to be noted here that,

Order 7 Rule 10 of the CPC, stipulates that the plaint can be returned ***at any stage of the suit***. But, the words "at any stage of the suit" are absent in Order 7 Rules 11, about rejection of a plaint. Hence, confusion may arise as to what stage of a suit a plaint can be rejected. However, this has been made clear in the following two decisions of the Appellate Division.

20. In 13 BLD (AD) (1993) 31: Jobeda Khatun Vs. Momotaz Begum, wherein it has been held that, " there is no hard and first rule as to when a plaint can be rejected. It all depends upon the facts and circumstances of each case. As a general rule, an application to reject a plaint ought to be filed at the earliest possible opportunity, so as not to fritter away time, energy and money on a fruitless litigation". Similar view has been reiterated in 54 DLR (AD)(2002) 125: Kazi Shahajan (Md) and another Vs. Md. Khalilur Rahman Madbar and others. The parties, in this case, have already examined witnesses and at this stage, the application Under Order 7, Rule 11 of the CPC has been filed. The Apex Court, held that, " there is no hard and fast rule when such an application for rejection of plaint is to be filed, but ends of justice demands that it must be filed at the earliest opportunity".

21. *As such, the law that, there is no hard and fast rule as to when a plaint can be rejected or when an application for rejection of the*

plaint can be filed, has been set at rest by the Appellate Division in 13 BLD(AD)(1993)31 and in 54 DLR(AD)(2002) 125.

22. Therefore, a plaint can be rejected, (1) at the initial stage and before issuing of the summons or (2) after filing of written statement and (3) even at a late stage of the proceeding, because if the plaint itself does not have foundation to rest upon, then the evidence led or to be led based on the averments made in it will have no foundation too and will become a futile exercise.

23. However, in their successive decisions, the Apex Court has also laid down the following rules to be adhered to, in deciding the issue of rejection of a plaint, namely, (I) the averments made in the plaint alone shall have to be considered, in its entirety, but not the defence case or the defence materials, (II) a plaint cannot be rejected save on any of the grounds mentioned in Order 7 Rule 11 (a) to (d) or under section 151 of the Code of Civil Procedure, 1908, of the CPC in the light of the ratio decided in 18 DLR (HC)709 and followed since then in several cases, (III) if the issue, as to whether the plaint should be rejected, requires framing of an issue Under Order 14, Rule 2, or requires evidence to be taken, then, the plaint can not be rejected either under Order 7 Rule 11 or under section 151 of the CPC, though the issue of maintainability of the suit can be framed and decided at the first instance, as per Order 14, Rule 2, of the CPC.

24. Besides, most significantly, it should also be noted here that, clause (b) and (c) of Order 7 Rule 11, CPC, cast a statutory duty upon the court to ascertain whether the suit is properly valued and stamped. As apparent from the word 'shall' used in clause (b) and (c) of Rule (11), this is a mandatory duty cast upon the court and is not a ministerial duty.

25. Therefore, the plaint can be, rather must be, rejected at its inception i.e. before issuance of summons in the following two circumstances namely, (1) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so, vide Order 7 Rule 11(b), or, where the relief claimed is properly valued, but not sufficiently stamp and the plaintiff, on being required by the court fails to sufficiently stamp the same, vide Order 7, Rule 11 (c) of the Code of Civil Procedure, 1908.

26. Besides, the trial courts should examine for itself, at the very initial stage of the proceeding, whether it lacks jurisdiction to entertain and hear a suit and shall return the plaint, as per provision of Order 7 Rule 10 of the Code of Civil Procedure, if it lacks jurisdiction. However, if it has jurisdiction, but the suit appears to be barred by law or the plaint is otherwise liable to be rejected, then only it can take up and decide the issue of rejection of the plaint.

As regards injunction against publication of CIB reports.

27. Having read both the provisions of section '27KaKa' along section '5GaGa' of the BCA, 1991, we find that, these sections have imposed some statutory duties upon the banks, the financial institutions and the Bangladesh Bank.

28. Section 27 KaKa of BCA, 1991, reads as follows:-

"27KaKa. **List of defaulter borrowers, etc.-** (1) Every bank company or financial institution shall, in accordance with the provisions of article 43 and 44 of Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972), from time to time, send a list of its defaulter borrowers to the Bangladesh Bank.

(2) Bangladesh Bank shall, in accordance with the provision of article 45 of Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972), send the list received under sub-section (1) to all bank companies and financial institutions of the country.

(3) No bank company or financial institution shall grant any kind of loan facility in favour of any defaulter borrower:

Provided that: ....."

[Proviso to sub-section (3) is not relevant for our deliberation on this issue].

29. In 22 DLR (SC)(1970)41: Shahzada Muhd. Umed Beg Vs. Sultan Mahmood Khan and in 32 DLR (AD)(1980) 223: Hossain Ahmed Vs. H.D. Hossain and others, it has been made clear that, no

injunction can be granted to restrain the defendants from performing their statutory duties. In both these decisions, the provisions of section 56 (d) of the Specific Relief Act,1877, has been discussed and relied upon as the basis of the ratio decided in these two cases.

30. In a recent case reported in 7BLT (AD) (1999) 81: Bangladesh Shilpa Rin Sangshta Vs. Aziz Uddin Chowdhury, similar view has been taken by the Appellate Division. In this case, the loan-defaulter Aziz Uddin Chowdhury filed a Money Suit No. 5 of 1994, against Bangladesh Shilpa Rin Sangshta (BSRS), a development financial institution, in the First Court of Subordinate Judge, Moulivibazar, and prayed for temporary injunction against the Notification dated 25.08.1995, issued under Article 34 of the BSRS Order, 1972, to auction sale the Mills of the plaintiff-borrower. The trial court granted temporary injunction, as prayed for. Being aggrieved by the said order, the defendant-appellant (BSRS) preferred FMA No. 23 of 1996 in the High Court Division. A Division Bench, upon hearing the matter, dismissed the appeal and upheld the order of injunction. Then BSRS has preferred Civil Appeal No. 46 of 1997, with leave of the court. The Apex Court held that, *"it is palpably clear that the learned trial judge as well as the learned Judges of the High Court Division acted illegally and without jurisdiction in granting*

temporary injunction in a matter covered under Article 34 of the BSRS Order, which is a special enactment and it will prevail over general law. The temporary injunction order in this case had been passed contrary to the scheme of the legislation and the purpose of the special law providing for speedy recovery of the dues of the Sangstha".

31. **As such, the law that no injunction can be granted to restrain the defendant from performing its statutory duties has been set at rest in 22 DLR (SC) (1970) 41, in 32 DLR (AD)(1980)223 and in 7 BLT (AD) (1991) 81.**

32. **Besides, in a case where granting of an order of injunction is not permitted by law, i.e. where the plaintiff has no prima facie case, the issue of balance of convenience and inconvenience and the issue of irreparable loss become immaterial. Yet, in the case before us, and in similar other case, the balance of convenience and inconvenience lies in rejecting the prayer for injunction, least to save the national economy by saving the banking sector from being collapsed and closed to the great detriment of the depositors with whose fund the banks run their business, and to prevent liquidity crisis as well as short fall in the provisions. Besides, the banks, the depositors and the country's business economy will suffer irreparable loss, if injunction is granted in such case.**

If SolarEn is a borrower or not

33. As to whether we have heard both the parties at length, as to whether the plaintiff SolerEn is a borrower of IDCOL or was simply its agent. This issue touches the merit of the case and the same should not be conclusively settled in this interlocutory proceeding before us. However, the learned Advocate Mr. Md. Asaduzzaman, for the IDCOL, has made out a conspicuous case, with reference to the SolarEn's applications to IDCOL for rescheduling of the loan and then the reschedulement of the loan by IDCOL, that the SolarEn is borrower of IDCOL. His argument, on this count, outweigh the arguments made by the learned Advocate for the plaintiff-appellant-borrower, denying that it is not. Besides, further argument, advanced by Mr. Md. Asaduzzaman, that, there was no foreign grant extended to SolarEn through IDCOL and the disbursement of the loan as well as the demand for repayment and the reschedulement were made in local currency, also outweigh the argument of SolarEn Foundation on these counts as well.

Whether guarantors can be classified as defaulter-borrowers.

34. As regards the question as to whether the plaintiffs Nos. 2-10 can be classified as borrowers, in view of the decision cited by the plaintiff-appellant in 70 DLR (AD) 163: Sonali Bank Vs. Major Manzur Quader, we find that, the writ-petitioner was a share-

holder of the borrower company and a guarantor for its loan, in that case. Subsequently he has transferred his share, as permitted by law and with consent of the lender Bank. But, in the CIB report his name has been published as a defaulter-borrower, for the debt of the company. He filed this writ petition in 2001, the judgment in the writ petition was pronounced in 2006, amendment in the BCA came thereafter in 2013. The judgment of the Appellant Division was given on 23.08.2016. The Appellate Division, in this circumstances, held that, the writ petitioner should not be treated as a defaulter borrower by virtue of personal guarantee only. The Appellate Division was also of the view that, the amended definition of guarantors was not relevant for the purpose of disposal of that appeal. The facts of the present case is totally different from the case cited. Hence, 70 DLR (AD) 163 is liable to be distinguished.

As regards retrospective effect.

35. However, in view of the arguments placed before us a query has been made from the Bench, as to whether the amendment made in section '5GaGa, in the BCA, 1991, in 2023, will have any retrospective effect as regards the plaintiff Nos. 2-10, who have signed the personal guarantees on 20.07.2011. The learned Advocate for the appellant submits that, the substantive law is presumed to be prospective in operation. However, the

presumption as to the prospective operation of the substantive law is not rigid, nor an inflexible rule of interpretation of statute. We are not required to deliberate upon this issue for disposal of the present Rule.

If IDCOL is Financial Institution

36. Having considered Annexure 7 (1) to the Supplementary Affidavit of the IDCOL, we find and hold that, it is a financial institution for the purpose of section '27KaKa' of the BCA,1991, persuant to the license granted to them.

CONCLUSION

37. We appreciate the submissions made by the learned Advocates for both the parties.

38. We do not find any merit in the Rule.

O-R-D-E-R-

The Rule is discharged.

However, since the First Miscellaneous Appeal No. 42 of 2024, arising out of First Miscellaneous Appeal Tender 412 of 2022, is pending for hearing, we are inclined to grant stay for a period of 3(three) months from date or till disposal of the F.M.A. No. 42 of 2024, whichever should occur earlier.

No order as to cost.

No one was present before the court to represent Bangladesh Bank or 'its' General Manager, CIB. Hence, let a copy of this

judgment be sent to Dr. Ahsan H. Mansur, the most trusted Governor, Bangladesh Bank, for his information and to issue necessary directives or instructions, if there is to be any.

Copies of this judgment and order be sent to the Bench concerned along with the record.

Biswajit Debnath,J.

I agree.

Md. Abdul Mannan,J:

I agree.

Jashim: B.O.