

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1500 of 2019

IN THE MATTER OF:

M/s. SEW Infrastructure Ltd.

...Appellant

Vs.

M/s. Mahendra Investment Advisors Pvt. Ltd.

...Respondent

Present: For Appellant: - Mr. Sanjay Kumar Chhetry, Advocate.

For Respondent: - Mr. Jay Kishore Singh and Mr. Mohit Raj, Advocates.

O R D E R

09.01.2020— Having heard learned counsel for the Appellant and being satisfied with the grounds, the delay of 14 days in preferring the appeal is hereby condoned.

The Appellant- 'M/s. SEW Infrastructure Limited' claimed to be 'Financial Creditor' of 'M/s. Mahendra Investment Advisors Private Limited'- ('Corporate Debtor') and moved application under Section 7 of the Insolvency and Bankruptcy Code, 2016, which has been rejected by impugned order dated 24th October, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad on one of the grounds that the 'Corporate Debtor' is a Guarantor in respect of the loan given to the 'Principal Borrower'- 'M/s. Amrit Jal Ventures Private Limited' and the Appellant claimed amount as 'Financial Creditor', has already moved a petition under Section 7 against 'Principal Borrower' which has already been admitted.

Contd/-.....

2. Once for same set of claim and default application under Section 7 against the Principal Borrower'- 'M/s. Amrit Jal Ventures Private Limited' is admitted, the application against the 'Corporate Guarantor' is not maintainable.

3. Reliance has been placed on the decision of this Appellate Tribunal in "**Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Ltd.– Company Appeal (AT) (Insolvency) No. 346 of 2018 etc.**" wherein this Appellate Tribunal held:

"32. There is no bar in the 'I&B Code' for filing simultaneously two applications under Section 7 against the 'Principal Borrower' as well as the 'Corporate Guarantor(s)' or against both the 'Guarantors'. However, once for same set of claim application under Section 7 filed by the 'Financial Creditor' is admitted against one of the 'Corporate Debtor' ('Principal Borrower' or 'Corporate Guarantor(s)'), second application by the same 'Financial Creditor' for same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the 'Corporate Guarantor(s)' or the 'Principal Borrower'). Further, though there is a provision to file joint application under Section 7 by the 'Financial Creditors', no application can be filed by the 'Financial Creditor' against two or more 'Corporate Debtors' on the ground of joint liability ('Principal Borrower' and one 'Corporate

Guarantor’, or ‘Principal Borrower’ or two ‘Corporate Guarantors’ or one ‘Corporate Guarantor’ and other ‘Corporate Guarantor’), till it is shown that the ‘Corporate Debtors’ combinedly are joint venture company.

33. For the reasons aforesaid, while we uphold the initiation of the ‘Corporate Insolvency Resolution Process’ initiated under Section 7 of the ‘I&B Code’ against ‘Sunsystem Institute of Information Technology Pvt. Ltd.’- (‘Corporate Guarantor No.2’) by impugned order dated 24th May, 2018, we hold that the impugned order dated 31st May, 2018 initiating ‘Corporate Insolvency Resolution Process’ under Section 7 against the ‘Sunrise Naturopathy and Resorts Pvt. Ltd.’- (‘Corporate Guarantor No.1’) for same very claim/debt is not permissible and the application under Section 7 was not maintainable.”

4. Learned counsel for the Appellant while submitted that the application against the ‘Corporate Debtor’ is simultaneously maintainable, but we are not inclined to accept such submission as the Appellant can initiate only one proceeding against either the ‘Principal Borrower’ or against the ‘Corporate Debtor’ under Section 7.

5. Once it is alleged that the ‘Principal Borrower’ has defaulted, it cannot trigger against both the ‘Principal Borrower’ (as ‘Corporate Debtor)

and 'Corporate Guarantor' (as 'Corporate Debtor'). For same set of claim, two companies cannot go for liquidation which will be against the principles of 'I&B Code'.

6. Apart from the aforesaid fact, we find that the Respondent has taken specific plea that the 'Corporate Debtor' is 'Non-Banking Financial Company' (NBFC) and do not come within the definition of 'Financial Services' as defined under Section 3(16) or within the definition of 'Financial Service Provider' as defined under Section 3(17) of the 'I&B Code'.

7. In view of the aforesaid position of law, we are not inclined to interfere with the impugned order of rejection of the application under Section 7.

The appeal is dismissed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

Ar/g