

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No.993 of 2023

IN THE MATTER OF:

Mohan Kumar Garg

...Appellant

Versus

Omkara Assets Reconstruction Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant: Mr. Siddharth Sharma, Advocate.

**For Respondents: Mr. Adarsh Ramanujan, Mr. Lzafeer Ahmad BF,
Mr. Skanda Shekhar, Advocates.**

**Mr. Abhishek Anand, Mr. Karan Kohli, Mr.
Vaibhav and Ms. Lubhanshi Rai, Advocates for
IRP.**

ORDER

21.08.2023: Heard learned counsel for the Appellant. This Appeal has been filed against order dated 15.06.2023 passed by the Adjudicating Authority by which an application under Section 7 filed by the Financial Creditor against the Appellant who was Corporate Guarantor has been admitted.

2. When the Appeal came for consideration before this Court on 01.08.2023, learned counsel for the Appellant submitted that Appellant needs to approach the Financial Creditor for settlement and learned counsel for the Appellant today submits that no settlement has been fructified with the Financial Creditor.

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4. Learned counsel for the Appellant challenging the order contends that the proceedings against the Corporate Guarantor ought not to have been initiated since proceeding under Section 7 against the Principal Borrower has already been admitted and proceeding. He submitted that the Adjudicating Authority has relied on judgment of this Tribunal in **“Athena Energy”** whereas judgment of the Coordinate Bench in **Vishnu Kumar Agarwal’s Case** has taken the view that simultaneous proceeding against the Principal Borrower and the Corporate Guarantor cannot proceed. He further submits that documents of corporate guarantee was not placed on the record and not examined by the Adjudicating Authority.

5. Learned counsel for the Respondent submits that the Corporate Guarantee was never disputed by the Appellant, hence, necessity did not arise to bring the same on record.

6. We have considered the submissions of learned counsel for the parties and perused the record.

7. We have noticed that the Adjudicating Authority has noted that the Notice was issued on 14.03.2018 by the Financial Creditor to Principal Borrower as well as the Corporate Guarantor that the Principal Borrower has defaulted in payment towards the outstanding amount. The Notice under Section 13(2) was also issued to the Principal Borrower and the Corporate Guarantor. Corporate Guarantor has sent a reply dated 17.03.2018 contending that Financial Creditor has not acted in due diligence while

disbursing the loan. We are of the view that the said reply in no manner dispute the existence of Corporate Guarantee. We are of the view that Appellant cannot be allowed to raise the issue of non-filing of the Corporate Guarantee on the record when the existence of Corporate Guarantee was not even disputed in the proceeding.

8. Insofar as submission of the Appellant that simultaneous proceeding cannot be initiated against the Principal Borrower and the Corporate Guarantee, the Adjudicating Authority has adequately answered the said issue and referred to relevant judgments. Learned counsel for the Respondent has relied on subsequent judgment of this Tribunal in ***“Edelweiss Asset Reconstruction Co. Ltd. vs. Gwalior Bypass Projects Ltd., Company Appeal (AT) (Ins.) No. 1186 of 2019”***, ***“State Bank of India vs. Mr. Animesh Mukhopadhyay, Company Appeal (AT) (Ins.) No. 186 of 2021”*** and ***“Kanwar Raj Bhagat vs. Gujarat Hydrocarbons and Power SEZ Ltd. & Anr., Company Appeal (AT) (Ins.) No. 1096 of 2020”*** taking the view that simultaneous proceedings against the Principal Borrower and the Corporate Guarantor can be initiated.

9. We are of the view that law is well settled that proceeding under Section 7 can be initiated against both the Principal Borrower and Corporate Guarantor and there is no inhibition in proceeding against the Corporate Guarantor although proceeding against Principal Borrower under Section 7 was admitted. We are of the view that no error has been committed by the

Adjudicating Authority in admitting Section 7 application against the Corporate Guarantor. There is no merit in the Appeal. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

(Ajai Das Mehrotra)
Member (Technical)

Archana/nn