

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

22nd September, 2022

Subject: Judgment¹ dated 22nd September, 2022 of the Hon'ble SC in the matter of Maitreya Doshi Vs. Anand Rathi Global Finance Ltd. and Anr. [Civil Appeal No. 6613 of 2021].

The Hon'ble Supreme Court vide its order dated 22nd September, 2022 while dismissing the appeal held that the approval of a resolution in respect of one borrower cannot certainly discharge a co-borrower under the Insolvency and Bankruptcy Code, 2016 (the Code). The Hon'ble SC made some important findings and observations as under:

Sl. No.	Subject / Issue	Ruling	Para / Page No.
1	Contract of Indemnity, Guarantee, and Pledge	<p>(a) The contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person. In a contract of indemnity, a promisee acting within the scope of his authority is entitled to recover from the promisor all damages and all costs which he may incur.</p> <p>(b) A contract of guarantee, on the other hand, is a promise whereby the promisor promises to discharge the liability of a third person in case of his default. The person who gives the guarantee is called the surety. The person in respect of whose default, the guarantee is given is the principal debtor and the person to whom the guarantee is given is the creditor. Anything done or any promise made for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.</p>	<p>35/10-11</p> <p>35/11</p>

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		(c) The bailment of goods as security for payment of a debt or performance of a promise is a pledge	35/11
2	Proceedings against co-borrowers	<p>(a) Relying on the ration of <i>Lalit Kumar Jain Vs. Union of India</i>, SC held that the approval of a resolution in respect of one borrower cannot certainly discharge a co-borrower.</p> <p>(b) If there are two borrowers or if two corporate bodies fall within the ambit of corporate debtors, there is no reason why proceedings under section 7 of the Code cannot be initiated against both the corporate debtors.</p> <p>(c) The same amount cannot be realised from both the corporate debtors. If the dues are realised in part from one corporate debtor, the balance may be realised from the other corporate debtor being the co-borrower.</p> <p>(d) Once the claim of the financial creditor is discharged, there can be no question of recovery of the claim twice over.</p>	<p>36/11</p> <p>37/11-12</p> <p>37/11-12</p> <p>37/12</p>
3	Conclusion	The mere fact that corporate debtor is a pledgor is wholly irrelevant and does not in any manner disentitle the financial creditor to initiate proceedings under section 7 of the Code against such a co-borrower.	32/10