

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 323 of 2024
& I.A. No. 1080 of 2024

IN THE MATTER OF:

Iskon Infra Engineering Pvt. Ltd.

...Appellant(s)

Versus

Central Bank of India

...Respondent(s)

Present:

For Appellant : Mr. Mrinal Harsh Vardhan, Mr. S.S. Bhati, Mr. Kailash Ram, Mr. Anurag P., Mr. Rohit Sharma, Advocates.

For Respondents :

ORDER
(Hybrid Mode)

01.04.2024: Heard Learned Counsel for the Appellant. This appeal is filed against the order dated 21.11.2023 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-VI) in CP (IB)-69/ND/2022. By which, the application filed by the Liquidator under Section 59 of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 has been dismissed.

2. The Appellant before us has commenced the voluntary liquidation proceedings and has reached the stage of Section 59(7) of the IBC and thereafter when the Company Petition was filed and the matter came before the Tribunal, it directed the issuance of notice to the RoC and also to Punjab National Bank and Oriental Bank of Commerce since the Corporate Person has given Corporate Guarantee to them. Pursuant to the notice issued by the Tribunal, the RoC, Punjab National Bank and Central Bank of India participated in the proceedings and filed its report. The RoC submitted a

report that against the Company towards Corporate Guarantee of more than Rs. 1257 Crores approximately beginning from year 2010 onwards and as on date as per MCA-21 record, no satisfaction of charge has been filed till date by the Company/liquidator. The Central Bank of India has also filed objections wherein it was stated that M/s Abhinav Steels and Power Limited, was granted a term loan and working capital facilities by consortium of banks namely Oriental Bank of Commerce, Punjab National Bank and Central Bank of India in which Petitioner Company was one of the Corporate Guarantors.

3. Noticing the above objections, the Adjudicating Authority dismissed the application.

4. The Learned Counsel for the Appellant challenging the order contends that guarantee has not been invoked by any of the financial creditors nor any claim was filed before the liquidator hence, the Adjudicating Authority committed error in rejecting the liquidation application. The Learned Counsel for the Appellant referred to one of the Guarantee Deed which was executed by Company in favour of the Punjab National Bank which is at page 20 of the Additional Affidavit and referred to para 16 and 23 of the Deed. He has also placed reliance on the judgment passed in Company Appeal (AT) (Insolvency) No. 329 of 2023 **“Pooja Ramesh Singh Vs. State Bank of India & Anr.”** decided on 28.04.2023 and in support of his submission submitted that liability against the Corporate Guarantor shall arise only when guarantee is invoked.

5. We have considered the submissions of Learned Counsel for the Appellant and perused the record.

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6. In the present case, where on the directions of the Adjudicating Authority, notices were issued to the RoC, Punjab National Bank and Oriental Bank of Commerce, in paragraphs 5, 6 and 7 of the impugned order, following has been noticed:

“5. This Tribunal directed the Petitioner to issue a notice to the RoC and also to Punjab National Bank and Oriental Bank of Commerce (now merged with PNB) since the Corporate Person has given Corporate Guarantee to them. Pursuant to the notice issued by this Tribunal, the RoC, PNB and Central Bank of India participated in the proceedings. The RoC has filed its report dated 02.03.2022 and made some observations which are stated as under:-

i. As per MCA-21 record, it has seen that total 23 charges are still showing against the Company towards Corporate guarantee of more than Rs. 1257 Crores approx. beginning from year 2010 onwards and open as on date. As per MCA-21 records, no satisfaction of charges has been filed till date by the Company / liquidator. Therefore, before dissolution of the Company, the liquidator must take steps for satisfaction of such charges.

6. The Central bank of India has filed its reply dated 08.07.2022. The objections of the Bank are as under:-

.....

v. That the Petitioner Company has executed a deed of corporate guarantee dated 28.12.2018 with all the 3 banks.

7. The Liquidator has made the following submissions:-

.....

iii. That Corporate Guarantee given by the Corporate Person is a contingent liability of the Company as mentioned in the Financial Statements of the Corporate Person. It is pertinent to mention that the Central Bank of India has still not filed any claim with the Corporate Person claiming the amount from them for which guarantee was given.”

7. From the facts brought on record, especially by RoC that 23 charges are still showing against the Company and the Company has issued Corporate Guarantee. The submission which has been pressed by the Appellant is that since Corporate Guarantee has not been invoked and no claim has been filed that cannot be relied for rejecting the liquidation application.

8. The Learned Counsel for the Appellant has referred to paragraphs 14 and 23 of the Guarantee Deed which are as follows:-

“14. A letter or notice or certificate in writing signed by a duly authorised official of Lenders shall be conclusive evidence against the Guarantor of the amount for the time being due to Lenders from the Borrower in any action or proceeding brought on this Guarantee against the Guarantor.

23. Any demand for payment or notice under this Guarantee shall be sufficiently given if sent by post to or left at the last known address of the Guarantor or its successors or assigns as the case may be, such demand or notice is to be made or given and shall be assumed to have reached the address in the course of post, if sent by post, and no period of limitation shall commence to run in favour of the Guarantor until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice which sent by post it shall be sufficiently proved that the envelope containing the notice was posted and a Certificate by any of the responsible officer

of lenders that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the Guarantor even though it was returned unserved on account of refusal of the Guarantor."

9. The fact that guarantee has not been invoked, does not absolve the Corporate Guarantor from debt. The debt which is Corporate Guarantor, the Company has been given corporate guarantee and undertaken to pay the debt and in para 10 of the Deed, following has been undertaken:

"10. The rights of Lenders against the Guarantor shall remain in full force and effect notwithstanding any arrangement which may be reached between Lenders and the other Guarantor/s, if any, or notwithstanding the release of that other or others from liability and notwithstanding that at any time hereafter the other Guarantor/s may cease for any reason whatsoever to be liable to LENDERS, Lenders shall be at liberty to require the performance by the Guarantor of its obligations hereunder to the same extent in all respects as if the Guarantor had at all times been solely liable to perform the said obligations."

10. The Learned Counsel for the Appellant has also relied on a judgment passed by this Tribunal in the case of **Mudhit Madanlal Gupta Vs. Supreme Constructions and Developers Pvt. Ltd., 2023 SCC OnLine NCLAT 378**, para 7 which is as follows:

"7. When the Financial Creditor has invoked the corporate guarantee of the corporate guarantor by the notice dated 16.10.2020 and asked the corporate guarantor to make the payment within seven days from the receipt of the notice, the default has occurred during the 10A period and the default dated 02.07.2019 which is default alleged against the Principal Borrower can not be put to a default for corporate guarantor. Liability of corporate guarantor although is coextensive of the Principal Borrower but when the Guarantee requires invocation of the guarantee deed, default on the guarantor shall be the date when corporate guarantee has been invoked."

11. The above judgment was a case where this court took a view that default occurred between 10A period and it was held that default on the Guarantor shall be on the date when the Corporate Guarantee has been invoked. The above was a case arising out of Section 7 application which was rejected on the ground of 10A which order was upheld. The above judgment in no manner support the submission of the Appellant.

12. The liability of Corporate Guarantor is coextensive with the Lenders and the Lenders are at liberty to require the performance by the Guarantor of its obligation. The Adjudicating Authority after noticing the fact which was brought by the RoC as well as Central Bank of India and has rightly taken the view that the present is not a case for liquidating the Company under the process of voluntary liquidation. The submission of the Appellant that since guarantee has not been invoked there is no debt cannot be accepted. Guarantee continues to bind the Corporate Guarantor to discharge its liability and the fact that as on date, guarantee has not been invoked, cannot be a ground for Appellant to be liquidated under Section 59 of the IBC. We thus, do not find any error in the impugned order. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

R.N/N.N