

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1021 of 2019

IN THE MATTER OF:

Karan Goel Appellant

Vs

M/s Pashupati Jewellers & Anr. Respondents

Present:

**For Appellant: Mr. Rana Mukherjee, Senior Advocate with
Ms. Bansuri Swaraj and Mr. Siddhash Kotwal,
Advocates.**

For Respondents:

O R D E R

01.10.2019 This Appeal has been preferred by Mr. Karan Goyal, Promoter of M/s Pashupati Jewellers ('Corporate Debtor') against order dated 20th September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Special Bench New Delhi.

2. By the impugned order, the Adjudicating Authority admitted the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short the 'I&B Code') preferred by M/s Pashupati Jewellers ('Financial Creditor'). Learned Counsel appearing on behalf of the Appellant submits that loan amount Rs.2,60,00,000/- was taken by one Mr. Bal Karan Singh Bhullar from Sumedha Kanodia and an agreement was executed on 7th April, 2017. The said agreement was executed in violation of Section 185 of the Companies Act, 2013. The 'Corporate Guarantee and Undertaking' Agreement dated 7th April, 2017 as purported, has been given by Marigold Overseas Limited ('Corporate Debtor'). There is actually a fraud played by one of the erstwhile Director, namely – Mr. Navlesh. The so-called 'Corporate Guarantee and Undertaking' Agreement dated 7th April, 2017, in fact, is not reflected in the records of the 'Corporate Debtor' available with the Registrar

of Companies. Therefore, according to him, in the eyes of law, no 'Corporate Guarantee' has been given by the Marigold Overseas Limited ('Corporate Debtor') and, therefore, application under Section 7 of the I&B Code is not maintainable.

3. We have heard the learned Counsel for the Appellant and perused the record.

4. 'Corporate Guarantee and Undertaking' Agreement was executed on 7th April, 2017 is on record, which shows that the said Agreement is on e-Stamp, Indian Non Judicial issued by Government of National Capital Territory of Delhi. In the said e-Stamp, it has been clearly mentioned that the e-Stamp was purchased by Marigold Overseas Ltd. for the purpose of Loan Agreement. Merely, because the Appellant - Mr. Karan Goel has entered into as Director in May 2017, now cannot take a plea that the 'Corporate Guarantee and Undertaking' Agreement dated 7th April, 2017 was a fraud played by one Mr. Bal Karan Singh Bhullar on the ground that is has not been reflected in the record of the Registrar of Companies.

5. The 'Corporate Guarantee' was entered into by the Management of the 'Corporate Debtor', i.e., Marigold Overseas Limited. If for one or the other reason, they have not referred the 'Corporate Guarantee and Undertaking' Agreement to Registrar of Companies and suppressed the fact, the Appellant or the subsequent Director, cannot take a plea that the 'Corporate Guarantee and Undertaking' Agreement was obtained by fraud on 7th April, 2017 and is not reflected in the records of the Registrar of Companies.

6. In **"Innoventive Industries Ltd. Vs. ICICI Bank and Anr. - (2018) 1 SCC 407"**, the Hon'ble Supreme Court observed: -

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as

meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by

documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”

7. From the aforesaid finding of the Hon’ble Supreme Court, it is clear that once the Adjudicating Authority is satisfied on the basis of records that

the debt is payable and there is default, the Adjudicating Authority is required to admit the application. The Respondent – M/s Pashupati Jewellers having enclosed the copy of the ‘Corporate Guarantee and Undertaking’ Agreement dated 7th April, 2017 instituted on e-Stamp, issued by Government of National Capital Territory of Delhi, it was not open to the Adjudicating Authority to deliberate on the issue whether e-Stamp is a forged document or not. Merely because a suit has been filed by the Appellant and pending, cannot be a ground to reject the application under Section 7 of the I&B Code. Pre-existing dispute cannot be a subject matter of Section 7, though it may be relevant under Section 9 of the I&B Code.

8. We find no merit in this Appeal. It is accordingly, dismissed with no costs.

9. However, we make it clear that the observations made in this Appeal by this Appellate Tribunal and the Adjudicating Authority cannot be relied upon for deciding the merit of the suit, if any pending.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

Ash/GC