

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 107 of 2020

IN THE MATTER OF:

Pradeep Kumar Goenka

...Appellant

Versus

Shubham Capital Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant : Though appeared, not marked presence

O R D E R

24.01.2020 This Appeal has been preferred by the erstwhile 'Resolution Professional' against the observations made in paragraphs 33 and 34 of the impugned order dated 20th December, 2019, which reads as under:

“33. *Admittedly, corporate guarantee has been issued by the corporate debtor and it cannot be considered as a debt due and payable then the question arises as to whether this can be ignored at all? In our considered view, this cannot be done for the simple reason that some financial commitment exists in law which may have implications for viability and implementation of resolution plan. Resolution applicant has to submit a plan which should be prepared on the basis of information memorandum provided to him by the resolution applicant in*

consultation/after approval of CoC. If details uninvoked corporate guarantee(s) are not disclosed, then a situation may arise in future whereby the resolution applicant may not implement the resolution plan and back out in case guarantee is invoked. As per regulation reproduced herein before, it is apparent that the corporate guarantees given in favour of corporate debtor are only to be disclosed in a specific manner. No specific clause as regard to disclosure of corporate guarantee issued by the corporate debtor either to an independent party or to a related party is mentioned. However, as stated earlier, non-disclosure of such information relating to such guarantee may result into failure of resolution plan or some other unintended consequences, such as, litigation etc. Thus, to avoid the happening of such events, in our considered view, the information relating to such guarantee given must be given in the information memorandum as per clause 36(2)(1) which would take care of all eventualities.

34. *It is also noted that the RP has included corporate guarantee issued in favour of ICICI Bank only but as per information memorandum at page 78 of the Paper Book, it appears that corporate debtor has*

also issued a corporate guarantee in relation to the same entity i.e. Skipper Furnishings Pvt. Ltd. in favour of Magma Fincorp Ltd. The value of such corporate guarantee is Rs. 75 Lakh. However, the said guarantee has not been considered in arriving as a claim or in arriving of voting percentage. Hence the action of RP appears to be contradictory and titled in favour of ICICI Bank”

From bare reading of the aforesaid paragraphs, we find that there is no individual aspersion against the Appellant, it is about the action which has been declared to be contradictory or tilting which resulted into different unintended consequences.

So far as the observation made in paragraph 48 of the impugned order is concerned, whether one or another person has filed the claim or not, is a question of fact and we are not going to interfere with such finding as the facts, even if wrongly stated, does not amount to causing any aspiration to the erstwhile ‘Resolution Professional’, who has moved this Appeal.

The Appeal is accordingly dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Shreesha Merla]
Member (Technical)

/ns/gc/