NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI Company Appeal(AT) (Insolvency) No. 1185 of 2019

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Ltd.

...Appellant

Vs

Goldern Glow Estates Pvt. Ltd. & Anr.

....Respondents

Present:

For Appellant: Mr. Buddy Ranganathan, Mr. Sugam Seth, Mr.

Manbhav Anand and Mr. Aditya Vashisth,

Advocates

For Respondents: Mr. Swapnil Gupta, Advocate for Respondent No.

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Mr. Krishnendu Datta, Ms. Mehak, Mr. Shashank Agarwal, Ms. Aayushi Singh and Mr. Satendra Rai,

Advocates for Respondent No. 2.

ORDER

23.01.2020 Learned Counsel for the Appellant states that there is similar matter in Company Appeal(AT)(Insolvency) No. 1186 of 2019 – Edelweiss Asset Reconstruction Company Ltd. Vs. Gwalior Bypass Projects Ltd. which is to-day before another Bench in Court No. 3 (Item No. 10).

Heard. This Appeal has been filed by the Appellant who claims to be the Financial Creditor. It is stated that the Appellant filed Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (In short **TBC**') against the Principal Borrower- *Adel Landmarks Pvt. Ltd.* and subsequently *IL&FS* initiated a proceeding against Golden Glow Estates Pvt. Ltd.. That, Golden Glow Estates Pvt. Ltd. is the Corporate Guarantor and thus the Appellant filed claim before the IRP-RP which was admitted but *IL&FS* moved before the Adjudicating Authority and the Adjudicating Authority has, inter alia, relying

upon the Judgment in the matter *Dr. Vishnu Kumar Agarwal Vs. M/s Piramal Enterprises Ltd.* [Company Appeal(AT)(Insolvency) Nos. 346 & 347 of 2018 dt. 08.01.2019] set aside the claim of the Appellant in Corporate Insolvency Resolution Process on the basis that it is repetition of claim which already stands admitted in another process.

Learned Counsel is pointing out co-extensive rights against the Principal Borrower as well as Corporate Guarantor under Section 128 of the Contract Act and is pointing out that Section 60(3) amendment was brought into effect from 06.06.2018 and at the same time, Section 5(A) was added in section 5 of IBC to define Corporate Guarantor. It is stated that by same amendment Section 14(3) IBC excluded proceeding against the Corporate Guarantor from the effect of moratorium. It is argued that it shows that the Legislature does not want to keep the claim against the Corporate Guarantor in abeyance and thus it is argued that on the basis of Judgment of this Tribunal, the right cannot be kept pending or in abeyance. Learned Counsel states that although the Judgment in the matter of Dr. Vishnu Kumar Agarwal Vs. M/s Piramal Enterprises Ltd. was passed subsequently in January, 2019 still it dealt with the fact and situation as was existing before the above amendment pointed out by the learned Counsel. Learned Counsel for the Appellant states that these amendments had come into force w.e.f. 06.06.2018 but were not considered in the Judgment in the matter of Dr. Vishnu Kumar Agarwal Vs. M/s Piramal Enterprises Ltd.

Learned Counsel for the Respondent submitted that amendment referred by the learned Counsel for the Appellant would not affect in any

manner the applicability of Judgment in the matter of *Dr. Vishnu Kumar Agarwal Vs. M/s Piramal Enterprises Ltd.*

We find the rival submissions need consideration. We request the Registry for placing this matter before the Chairperson to consider if this matter should be placed before a Division Bench or Bench of three Hon'ble Judges.

Tentatively post the matter on 7th February, 2020.

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

> (Kanthi Narahari) Member(Technical)

Akc/Md