

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 201 of 2021

IN THE MATTER OF:

Mr. Mathuraprasad C Pandey & Ors.

...Appellants

Versus

Mr. Parthiv Parikh,

RP for M.V. Omni Projects (India) Ltd. & Anr.

...Respondents

Present:

**For Appellant: Mr. Abhijeet Sinha, Ms. Aastha Mehta and
Mr. Ravi Pahwa, Advocates.**

For Respondent: None.

ORDER
(Virtual Mode)

06.04.2021 Heard.

2. Learned Counsel for the Appellant refers to Resolution Plan (Page 64 at Page 92A). In Schedule 4 relating to Extinguishment of Claims. Paragraph 4 is as under:

“4. On and from the Effective Date, the guarantors that have provided guarantee for and on behalf of and in order to secure the debt availed by Corporate Debtor shall not be entitled to exercise any subrogation right in respect of such guarantee, Since the guarantor’s subrogation right would be an unsecured right, and their liquidation value is NIL and accordingly their settlement amount payable to them is NIL. On the Effective Date, all right and claims whether contingent or otherwise of whatsoever nature of any member of the Promoter group against Corporate Debtor and its subsidiaries shall stand irrevocably and unconditionally extinguished in perpetuity.”

3. The Learned Counsel for the Appellant submits that the Adjudicating Authority while dealing with this in the Impugned Order observed in Paragraph 15 as under:

“15. With regard to the subrogation (Clause 4 at page No. 78 of the application), it is hereby observed that since Resolution Plan is approved by the CoC, they have already dealt with the Guarantee, if any, provided by the Corporate Debtor i.e. before the approval of the Resolution Plan. Hence, are not dealt herein again. However, if any member of the Resolution Applicant has entered into or stand as Guarantor in individual capacity, in that event, he shall not be covered with any immunity given under the Resolution Plan.”

4. The Learned Counsel for the Appellant submits that the present Appeal is limited to challenge only this observation of the Adjudicating Authority.

5. Learned Counsel for the Appellant submits such change is not in tune with Judgment of the Hon'ble Supreme Court in the matter of “Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors.” Civil Appeal No. 8766-67 of 2019.

6. Issue notice limited to consideration of Paragraph 15 of the Impugned Order to the Respondents. Requisites along with process fee be filed, if not filed by 08.04.2021. If the Appellant provides the e-mail address of the Respondents, let notice also be issued through e-mail.

7. It appears that there is yet another Company Appeal (AT) (Ins.) No. 266 of 2021 pending with regard to Resolution Plan. Registry to check and take directions with regard to listing of both the Appeals before one Bench.

List the Appeal ‘For Admission (After Notice)’ Hearing on **11th May, 2021.**

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

**[Dr. Alok Srivastava]
Member (Technical)**

Basant B./md/

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