

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 394 of 2021**

In the matter of:

**Emerald Realtors Pvt. Ltd. (Shareholder of Sapphire
Land Development Pvt. Ltd.)
Room No. 02, CAPRI, 3rd Floor,
Anant Kanekar Marg, Bandra (East)
Mumbai- 400 051**

....Appellant

Vs.

1. Suraksha Asset Reconstruction Ltd.

**Having its registered address at
'A' Wing, Naman Midtown, Senapati Bapat
Marg, Prabhadevi, Mumbai- 400 013**

2. Ankur Kumar

**Interim Resolution Professional
Sapphire Land Development Pvt. Ltd.
Office No. 18, 10th Floor, Pinnacle Corporate Park,
G- Block, Bandra Kurla Complex, Bandra (E)
Mumbai- 400051**

....Respondents

**For Appellant: Mr. Rahul Chitnis, Mr. Subir Kumar, Ms. Disha
Shah, Advocates.**

**For Respondents: Mr. Chitranshul A Sinha, Mr. Jaskaran Singh
Bhatia, Advocate for R1.
Mr. Bindu Bhatia, Advocate for RP.**

ORDER

(Through Virtual Mode)

09.07.2021: Heard learned Counsel for the Appellant and the Learned Counsel for the Respondent No.1.

2. This Appeal has been filed by the Appellant- Shareholder of 'Sapphire Land Development Pvt. Ltd.', the 'Principal Borrower' against the impugned order dated 30th April, 2021 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in CP No. 987 of 2020 which was filed by the Respondent

No.1- 'Financial Creditor' under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short). The issue involved in this Appeal is with regard to parallel proceeding filed against the 'Principal Borrower' when already Corporate Insolvency Resolution Process ("CIRP" for short) had been initiated against the 'Corporate Guarantor' and the claim of the 'Financial Creditor' had already been accepted in the CIRP for the whole amount.

3. Learned Counsel for the Appellant has argued that there was already a CIRP initiated on 20.08.2019 against the 'Corporate Guarantor'- 'Housing Development and Infrastructure Limited' (HDIL) and in that petition which was CP(IB)-27/I&BP/MB/2019 filed by the 'Bank of India', the claim of the 'Financial Creditor' had been admitted.

4. The Learned Counsel for the Appellant submits that the 'Corporate Debtor' had, while opposing the Application under Section 7 of the 'I&B Code' before the Adjudicating Authority, filed Written Submissions, copy of which is at Page 185. The Learned Counsel referred to the following paragraph of the Written Submissions: -

*"The claim of Rs.150 crores sought by the Petitioner in the present proceedings against the Corporate Debtor has been admitted in its entirety in the Corporate Insolvency Resolution Process (hereinafter referred to as **"CIRP"**) OF Housing Development and Infrastructure Limited (Corporate Guarantor to the loan secured by present Corporate Debtor) (hereinafter referred to as **"HDIL"**). The Petitioner has, with mala fide intention, not disclosed such factual admitted position in the Form I filed to initiate CIRP process against the Corporate Debtor herein. The Respondent relies upon the judgment of the Hon'ble NCLAT in the case of **Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Ltd.** [Company Appeal No. 346 of 2018 dated 8th January 2019] (herein after referred to as **"Piramal"**). The Petitioner*

*has sought to rely without placing on record the judgment passed by the Hon'ble NCLAT in the case of **State Bank of India v. Athena Energy Ventures Pvt. Ltd.** [Company Appeal No. 633 of 2020 dated 24th November 2020] (hereinafter referred to as "**Athena**"). For the reasons which will be discussed below, it is the legal submission of the Respondent that Athena, which takes a contrary view to the earlier Coordinate Bench in the case of Piramal, is a per incuriam judgment and the same is not binding to the present Hon'ble Tribunal as per the following Constitutional Bench judgment of the Hon'ble Supreme Court and Five-Judge Bench of the Hon'ble NCLAT with regard to doctrine of binding precedent....."*

5. Learned Counsel submits that although such Written Submission was filed and objection to the parallel proceedings was taken, the Adjudicating Authority while disposing the Application vide impugned order did not refer to the issue raised. Learned Counsel submits that the Appellant is of the view that the judgment in the matter of "**Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Ltd.**" – [Company Appeal (AT) (Insolvency) No. 346 of 2018 dated 8th January, 2019] was the judgment which was operating on the principle that for the same debt there cannot be two CIRPs. Learned Counsel submits that the Judgement in the matter of "**State Bank of India v. Athena Energy Ventures Pvt. Ltd.**" [Company Appeal (AT) (Insolvency) No. 633 of 2020 dated 24th November, 2020] was *per incuriam* and that a contrary view was taken by the Co-ordinate Bench and it is argued that the Appellant- Corporate Debtor had a right and the Adjudicating Authority had a duty to answer the submissions made by the Corporate Debtor. The Learned Counsel referred to contents of the judgment to point out that the Adjudicating Authority referred to the arguments but while recording their findings did not deal with two judgments to say why the Adjudicating Authority was not acting upon the judgment in the matter of "**Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Ltd.**".

6. Having gone through the record and having heard Learned Counsel for the Appellant at the stage of admission of Appeal and having gone through the judgment in the matter of **“State Bank of India v. Athena Energy Ventures Pvt. Ltd.”** which distinguished judgment in the matter of **“Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Ltd.”** so as to not follow the same, it must be said that the Appeal does not have any substance with regard to the legal issue. Judgment in the matter of Athena Energy was not *per incuriam*. The judgment interpreted the law consciously not following ‘M/s. Piramal Enterprises Ltd.’. In fact, one need not look at both the judgments and simply reproduce Section 60(2) of the ‘I&B Code’ as it now exists. Section 60(2) reads as under:-

“60. Adjudicating Authority for corporate persons.-
(2) *Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.”*

7. Section 60(2) itself makes it clear that if CIRP or liquidation proceeding of a Corporate Debtor is pending before a National Company Law Tribunal, an Application relating to Insolvency Resolution of a Corporate Guarantor or Personal Guarantor, as the case may be, of such Corporate Debtor is filed it shall be filed before such National Company Law Tribunal. This Section speaks for itself that the parallel proceedings against borrower and guarantor are maintainable.

8. It would have been of course appropriate for the Adjudicating Authority to specifically deal with the issue but even if the same was not dealt with, we do not

find any reason to entertain the Appeal just to remand it to see what Adjudicating Authority wants to say of the two judgments. Regarding the legal issue of maintainability, we do not find that there is any substance. We do not find any reason to admit the Appeal. Admission declined.

9. The Appeal is disposed of accordingly.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[Dr. Alok Srivastava]
Member (Technical)

Anjali/g