

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
Principal Bench, New Delhi

Comp. App. (AT) (Ins) No. 1403 of 2022

IN THE MATTER OF:

Intec Capital Ltd.

...Appellant

Vs.

Shwet Biotech Pvt. Ltd.

....Respondents

Present:

For Appellants : Mr. Dhruv Parwal, Adv

For Respondent : None

O R D E R

Per: Justice Rakesh Kumar Jain (Oral)

03.07.2023: This appeal is directed against the order dated 04.10.2022 passed by the 'National Company Law Tribunal, Mumbai Bench Court-IV' (hereinafter referred as to 'the Adjudicating Authority) by which an application bearing C.P.(IB) 1191 (MB)/ 2020, has been dismissed on the ground of being not maintainable.

2. In this case, notice to the Respondent was issued on 25.11.2022. On 16.01.2023, the following order was passed:

“Notice in this appeal was issued on 25.11.2022 for today. As per office record, notice to the Respondent has been delivered through speed post. No one has put in appearance on behalf of the Respondent despite service. The Respondent is thus proceeded against ex-parte. List again on 10th February, 2023 for ex-parte arguments.”

3. Thereafter, the appeal was admitted on 10.02.2023 and again a notice was issued to Respondent through speed post. Ultimately, on 25.04.2023, the following order was passed:

“Counsel for the Appellant has submitted that notice has been served to the Respondent through email. Office has reported that the email was sent on 01.04.2023 intimating the Respondent about the date of hearing. Despite service, no one has put an appearance on behalf of respondent. Therefore, the Respondent is proceeded against ex parte. List this case for ex parte argument on 24th May, 2023.”

4. Despite the aforesaid two orders of proceedings against the Respondent ex parte, nobody has put in appearance on behalf of the Respondent and no one has filed application for recalling of the order in order to participate in these proceedings or has challenged the order passed by this tribunal proceeding against the Respondent ex parte on account of non-appearance, despite service. Hence, we have heard the ex parte arguments of counsel for the Appellant.

5. Counsel for the Appellant has submitted that the Appellant is a ‘Non-Banking Finance Company’ (NBFC), registered with the ‘Reserve Bank of India’ vide a certificate of registration issued under Section 45IA of the RBI Act, 1934. The Appellant is the Financial Creditor of ‘Shwet Biotech Private Limited’ (Respondent) which is a Proprietary firm. It approached Intec Capital Limited for loan facilities along with Respondent who furnished the Corporate Guarantee in the financial facility availed by M/s.Shwet Realtors and stepped into the shoes of a borrower subsequently when borrower failed to repay the dues/loans. In this

regard, the 'Financial Creditor' entered into a Loan Agreement/ Loan Account No. LNMUM00613-140003158 dated 31.12.2013 with the Borrower and Corporate Guarantor/Corporate Debtor for an amount of Rs. 3,57,14,286 at 14% p.a. interest to be repaid in 60 EMI's of Rs. 83,10,09/-.

6. Counsel for the Appellant has submitted that the Respondent committed a default in repayment of debt and hence, the Application under Section 7 of the Code was filed, which has been dismissed by the 'Adjudicating Authority' on the sole ground that the application filed by the Appellant is not maintainable because it was of the view that an application under Section 7 of the Code can be filed only against the Corporate Debtor and not the Corporate Guarantor.

7. Counsel for the Appellant has relied upon a decision of the 'Hon'ble Supreme Court' rendered in Civil Appeal No.9286 of 2019 – K Paramasivam Vs. The Karur Vysya Bank Ltd. and Anr. decided on 06.09.2022 and referred to para 13 of it:

"13. Under Section 7 of the IBC, CIRP can be initiated against a Corporate entity who has given a guarantee to secure the dues of a non-corporate entity as a financial debt accrues to the corporate person, in respect of the guarantee given by it, once the borrower commits default. The guarantor is then, the Corporate Debtor."

8. The issue thus, raised in this appeal is no more *res integra* as it is covered by the aforesaid decision of the 'Hon'ble Supreme Court' in K.Paramasivam (supra).

9. Thus, taking note of the aforesaid decision of the 'Hon'ble Supreme Court' and the facts and circumstances of the present case, we are of considered opinion that the impugned order is illegal as it is contrary to the law laid down by the 'Hon'ble Supreme Court' in the case of K Paramasivam (supra). Therefore, the present appeal is hereby allowed and impugned order is set aside. The matter is remanded back to the 'Adjudicating Authority' to decide the application in accordance with law.

10. The parties are directed to appear before the 'Adjudicating Authority' on **21st July, 2023.**

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Raushan/Ravi