

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-1257(ND)/2019

IN THE MATTER OF:

Alchemist Asset Reconstruction Company Private Limited

.....Financial Creditor/Applicant

v.

IBD Universal Private Limited

.....Corporate Debtor/Respondent

**SECTION: UNDER SECTION 7 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016**

JUDGMENT DELIVERED ON 03.01.2020

CORAM:

CHIEF JUSTICE (RTD.) M.M. KUMAR

HON'BLE PRESIDENT

MS. SAROJ RAJWARE

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner:

Mr. Alok Kumar, Ms. Somya & Ms. Snigdha
Singh, Advocates

For the Respondent:

Mr. Vineet Arora, Ms. Ashutosh Jain & Mr.
Ketul Hansraj, Advocates

M.M.KUMAR, PRESIDENT

JUDGMENT

The instant petition has been filed by the Alchemist Asset Reconstruction Co. (P) Ltd. – financial creditor against IBD Universal (P) Ltd. despite the fact that another petition against the principal debtor/borrower namely NIIL Infrastructure Private Limited has already been admitted on 28.03.2018 being CP No. (IB)-560(PB)/2017. The present petition is filed against the corporate guarantor.

2. At this stage it would be profitable to read list of Financial Creditors prepared by Ms. Nisha Malpani, Resolution Professional in relation to the 'Principal Debtor/Borrower'-NIIL Infrastructures Private Limited. It is noteworthy to mention that said list (at pg. 14) has been attached with a reply to the petition by the Respondent and the same reads as under:

Sr. No.	Name of Financial Creditors	Claim submitted (Rs.)	Principal (Rs.)	Interest (Rs.)	Penal Interest (Rs.)	Claim admitted (Rs.)	Voting %
1.							
2.	Alchemist	243,493,878	140,918,576	6,55,72,465	37,002,837	243,493,878	17.88%

3. A glance on the aforesaid table makes it patent that the Financial Creditor has already lodged its claim before Ms. Nisha Malpani, Resolution Professional towards the facilities disbursed by the Financial Creditor to the Principal Borrower. The said claim of the Financial Creditor was entertained by Ms. Nisha Malpani, Resolution Professional and included in the aforesaid list as is evident from the list itself.

4. Therefore, the question that arises for consideration is whether the self-same claim could be made the basis for filing a petition under Section 7 of the Code for triggering the CIR Process. The question is no longer res integra. In, **Dr. Vishnu Kumar Agarwal v. M/s.**



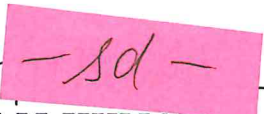
Piramal Enterprises Ltd., Company Appeal (AT) (Insolvency) No. 346 of 2018 decided on 08.01.2019, the Learned Appellate Tribunal held as under:

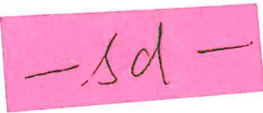
“.....However, once for same set of claim application under Section 7 filed by the ‘Financial Creditor’ is admitted against one of the ‘Corporate Debtor’ (‘Principal Borrower’ or ‘Corporate Guarantor(s)’), second application by the same ‘Financial Creditor’ for same set of claim and default cannot be admitted against the other ‘Corporate Debtor’ (the ‘Corporate Guarantor(s) or the ‘Principal Borrower’). Further, though there is a provision to file joint application under Section 7 by the ‘Financial Creditors’, no application can be filed by the ‘Financial Creditor’ against two or more ‘Corporate Debtors’ on the ground of joint liability (‘Principal Borrower’ and one ‘Corporate Guarantor’, or ‘Principal Borrower’ or two ‘Corporate Guarantors’ or one ‘Corporate Guarantor’ and other ‘Corporate Guarantor’), till it is shown that the ‘Corporate Debtors’ combinedly are joint venture company.”

5. On the basis of facts, statutory law and precedents discussed above it is evident that the claim lodged by the petitioner-Alchemist Asset Reconstruction Company Private Limited before Ms. Nisha Malpani, Resolution Professional of that Company (namely NIIL Infrastructures Private Limited-Principal Debtor/Borrower) has

already been collated and admitted. This cannot be again made the basis for triggering Corporate Insolvency Resolution Process in the present proceeding and it is not permissible as per the law laid down in Dr. Vishnu Kumar Agarwal case (supra). Therefore, on account of duplicacy of the claims the petition cannot be entertained.

6. As a sequel to the above discussion this petition fails and the same is dismissed.


(M.M.KUMAR)
PRESIDENT


(MS. SAROJ RAJWARE)
MEMBER (TECHNICAL)

03.01.2020
VINEET