



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER
SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

IA No. 538/JPR/2022
In CP No. (IB)- 99/7/JPR/2019

IN THE MATTER OF:

PUNJAB NATIONAL BANK

...Financial Creditor

VERSUS

M/S TIRUPATI BALAJI ENTERPRISES PVT. LTD.

...Corporate Debtor

MEMO OF PARTIES

IA(IBC) No. 538/JPR/2022:

Punjab National Bank

Branch Office- Raja Park
Parnami Parisar, Parnami
Mandir, Raja Park, Jaipur-
302004

...Applicant

VERSUS

M/S Tirupati Balaji Enterprises Pvt. Ltd.

A-2, Rana Pratap Nagar,
Kalwar Road Jhotwara,
Jaipur-302012

...Respondent

FOR THE APPLICANT : Vikas Jain, Adv.

FOR THE RESPONDENT : Non-appeared

Order Pronounced On: - 29.03.2023

**ORDER****Per: Shri Deep Chandra Joshi, Judicial Member**

1. The present IA bearing *IA(IBC)No.538/JPR/2022* has been filed by the Applicant under Section 60(5) of the Code read with Rule 11 of NCLT Rules for recalling/modification of the order dated 18.09.2019 and for final hearing on the merits of the case.
2. This application has been filed in the main petition bearing *CP No. (IB)-99/7/JPR/2019* titled as *Punjab National Bank Vs. Tirupati Balaji Enterprises Pvt. Ltd* wherein the Financial Creditor i.e. Punjab National Bank sought initiation of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Guarantor i.e. M/s Tirupati Balaji Enterprises Pvt. Ltd. In this matter, the order to proceed ex-parte against the Corporate Debtor was passed on 31.05.2019. Thereafter, vide order dated 18.09.2019 this matter was adjourned sine-die in view of the proceedings pending before the Hon'ble Supreme Court of India in the matter of *M/s Piramal Enterprises Ltd. Vs. Vishnu Kumar Agarwal, Civil Appeal No.(s) 878/2019*. In the order of the Supreme Court the Status quo was directed to be maintained for matter decided by the Hon'ble NCLAT in *Dr. Vishnu Kumar Agarwal Vs. M/s Piramal Enterprises Ltd. Company Appeal (AT) (Insolvency) No. 346/2018*.
3. It is pertinent to mention that a Section 7 application against the Corporate Debtor i.e. *M/s Guman Furnitures & Services Pvt. Ltd.* was also filed by the same Applicant which was before this Tribunal numbered as *CP No. (IB)-*



45/7/JPR/2018 titled as *Punjab National Bank vs. Guman Furnitures and Services Private Limited* . The said application was admitted on 01.03.2019 and CIRP was initiated against the Corporate Debtor. Thereafter, vide order dated 01.10.2019, this Authority ordered the liquidation of the Corporate Debtor pursuant to *IA No. 267/JPR/2019*.

4. In the present IA, the Applicant has asserted that CIRP proceedings are not recovery proceedings, which is a settled principle of law. Thus, the present proceedings can be continued as these are not in the nature of recovery proceedings. Further, the Applicant has relied on Section 128 of the Indian Contract Act, 1872 to enunciate that liability of a guarantor is co-extensive with that of the debtor, thereby making the guarantor jointly and equally liable to pay the debts of the Corporate Debtor. In the instant matter, the Corporate Guarantor i.e. M/s Tirupati Balaji Enterprise Pvt. Ltd. had furnished a guarantee for repayment of dues of amount borrowed by the Corporate Debtor i.e. M/s Guman Furnitures & Services Pvt. Ltd. For the same, the Applicant has quoted the judgement of the Hon'ble NCLAT in *Ajay Chaturvedi Vs. J M Financial Asset Reconstruction Company Ltd. & Anr. (Company Appeal (Insolvency) No. 320/2018)* and in *Ferro Alloys Corporation Ltd. Vs. Rural Electrification Corporation Ltd. (Company Appeal (AT) (Insolvency) No. 92, 93 &148/2017)*.
5. The Applicant has relied on Section 60(2) to outline that during the pendency of CIRP or Liquidation of Corporate Debtor, an insolvency



resolution application can be filed against both Personal Guarantor as well as Corporate Guarantor of such Corporate Debtor before the Adjudicating Authority. The Applicant has quoted the judgment of the Hon'ble NCLAT in *State Bank of India Vs. D. S. Rajendra Kumar (Company Appeal No. 87/2018)* and the judgment of Hon'ble Supreme Court in *State Bank of India Vs. Ramakrishnan & Ors. (AIR 2018 SC 3876)* to strengthen its arguments. Additionally, the Applicant has deduced that there is no provision in law which bars a creditor to proceed against the guarantor wherein proceedings against the Debtor is already pending before the Adjudicating Authority as a liability of the guarantor is co-extensive with that of the Corporate Debtor.

6. The Adjudicating Authority vide order dated 18.09.2019 relied on the judgment of the Hon'ble Supreme Court wherein the Order passed by the Hon'ble NCLAT in *Dr. Vishnu Kumar Awarwal vs. M/s Piramal Enterprises Ltd., Company Appeal (AT) (Insolvency) No. 346 of 2018* dated 08.01.2019 was stayed. The relevant portion of the Order passed by the Hon'ble NCLAT is reproduced as below:

“32. There is no bar in the ‘I&B Code’ for filing simultaneously two applications under Section 7 against the ‘Principal Borrower’ as well as the ‘Corporate Guarantor(s)’ or against both the ‘Guarantors’. 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.”

7. In the matter adjudicated by the Hon’ble NCLAT, the Hon’ble NCLAT was of the opinion that even though there is no bar in the Code for filing simultaneous applications under Section 7 against the Principal Borrower and the Corporate Guarantor, however, once for the same set of claim application is admitted against either the Principal Borrower or Corporate Guarantors, second application by the same Financial Creditor for same set of claim and default cannot be admitted.
8. The Hon’ble Supreme Court in the matter of *M/s Piramal Enterprises Limited vs. Vishnu Kumar Agarwal, Civil Appeal No(s). 878/2019* has vide order dated 01.02.2019, 22.02.2019, 09.09.2020, 03.11.2020 and 12.04.2021 observed that status quo shall be maintained in the aforementioned matter.
9. The Financial Creditor herein i.e. Punjab National Bank has preferred an Application under Section 7 of the Code against Corporate Guarantor due to default in loan account of the Corporate Debtor namely *M/s Guman*



Furnitures and Services Private Limited. The aforementioned Financial Creditor had also preferred an filed seeking initiation of CIRP against the Corporate Debtor before this Authority vide *CP No.(IB) 45/7/JPR/2018* which was allowed vide Order dated 01.03.2019. Subsequently, the CoC unanimously resolved to proceed with the Liquidation of the Corporate Debtor and the order of liquidation was passed by this Authority vide Order dated 01.10.2019. It was observed vide order dated 17.01.2023 that a meeting of the Stakeholders Consultation Committee ('SCC') could not be convened earlier and the Liquidator sought time to convene the meeting of SCC.

10. There is no restrain prevalent against the Applicant for proceeding against the Corporate Guarantor under Section 7 of the Code. However, it is noted that the Applicant cannot seek to avail dual benefits over and above the loan granted to the Corporate Debtor by proceeding against the Corporate Debtor as well as the Corporate Guarantor simultaneously. The main Company Petition filed by the Applicant under Section 7 of the Code numbered as CP No. (IB)-99/7/JPR/2019 is listed for further proceedings on 26.04.2023.
11. The Registry is directed to communicate the order to the Applicant as well as the Corporate Debtor.
12. Further in the interest of justice, the Registry is directed to issue fresh notices to the Corporate Debtor and Applicant is directed to file an Affidavit of



Service conveying this Order and the Next date of hearing to the Corporate Debtor.

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CHANDRA
JOSHI
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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**PRASHANT KUMAR MOHANTY,
TECHNICAL MEMBER**