

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**C.P. NO. IB-154(PB)/2018**

**IN THE MATTER OF:**

Oriental Bank of Commerce .....Financial Creditor/Applicant  
v.  
Helios Photo Voltaic Limited .....Corporate Debtor/Respondent

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

**JUDGMENT DELIVERED ON 10.10.2019**

**CORAM:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR  
HON'BLE PRESIDENT**

**DR. V.K SUBBURAJ  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Petitioner: Mr. Saran Suri, Advocate & Ms. Seema, CS.  
For the Respondent: Mr. Alok Dhir, Mr. Kunal Godhwani and Ms.  
Varsha Banerjee

**M.M.KUMAR, PRESIDENT**

**JUDGMENT**

**C.A. No. 853(PB)/2018**

Learned counsel for the applicant, Mr. Alok Dhir after obtaining instructions states that the prayer made in the application is rendered infructuous and no adjudication is necessary. We order accordingly.

Accordingly, the application is dismissed as having being rendered infructuous.



**C.A. No. 913(PB)/2019**

The instant application has been filed by the Respondent with a prayer for dismissal of the present petition on the ground of duplicacy of claim being pressed by the Financial Creditor. The sum and substance as has highlighted in the application is that the Corporate Insolvency Resolution Process was initiated in respect of the 'Corporate Guarantor' namely Moser Baer India Limited on 14.11.2017 in a petition under Section 7 of the Code filed by M/s. Alchemist Asset Reconstruction Company Limited (C.P. No. IB-378(PB)/2017) and Mr. Debendra Singh was appointed as an Interim Resolution Professional. Subsequently vide order dated 10.08.2018 passed by us Mr. Anil Kohli, Resolution Professional was replaced vice Mr. Debendra Singh in terms of Section 27 of the Code. Afterwards the Members of the CoC by a majority of 100% voting share, had decided to liquidate the 'Corporate Guarantor'-Moser Baer India Limited due to non-receipt of any resolution plan. The said decision of the CoC was approved by us vide order dated 20.09.2018 whereby liquidation of the 'Corporate Guarantor'-Moser Baer India Limited was passed. While passing the liquidation order besides the other directions, Mr. Anil Kohli, Resolution Professional was appointed as Liquidator in terms of Section 34(1) of the Code. He invited claims and the Financial Creditor



lodged its claim along with the proof claiming that the applicant is a Financial Creditor.

2. Notice of the application was issued to the Financial Creditor-Petitioner.

3. In the reply filed by the Petitioner-Financial Creditor, it has been asserted that present petition under Section 7 of the Code was filed much prior to the admission of claim in the liquidation proceedings of Corporate Guarantor viz. Moser Baer India Limited, wherein the Petitioner had filed its claim on the basis of a mere corporate guarantee and it is just an unsecured creditor. The Respondent in the garb of admission of said claim, intends to usurp the valuable rights of the Petitioner wherein it is a secured financial creditor. In para 5 to the parawise reply there is a candid admission made by the Petitioner that the claim of Rs. 939,10,91,379.60 in Form D filed by it before the Liquidator of Corporate Guarantor has been accepted and admitted by the Liquidator. In this regard an information was received by it vide an e-mail dated 03.09.2019.

4. At this stage it would be profitable to read list of Financial Creditors (Unsecured Creditors) filed by the Respondent with the application prepared by Mr. Anil Kohli, Liquidator in relation to the 'Corporate Guarantor'-Moser Baer India Limited against whom CIR

Process was initiated vide order dated 14.11.2017 and thereafter liquidation order was passed on 20.09.2018 and the same reads as under:

**“Moser Baer India Ltd. – in Liquidation**

43-B, Okhla Industrial Estate, Phase III, New Delhi-110020

CIN No. L51909DL1983PLC015418

Company under Liquidation w.e.f. 20.09.2018 by the order of Hon’ble NCLT, Principal Bench, Delhi

**List of Financial Creditors**

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**Financial Creditors (Unsecured Creditors)**

Sr. No.	Name of Financial Creditors	Address	Type of FC	Claim Amount	Admitted Amount	Deficiency /Remarks
1.	.....	.....	.....	.....	.....	.....
2.	.....	.....	.....	.....	.....	.....
3.	.....	.....	.....	.....	.....	.....
4.	.....	.....	.....	.....	.....	.....
5.	.....	.....	.....	.....	.....	.....
6.	.....	.....	.....	.....	.....	.....
7.	.....	.....	.....	.....	.....	.....
8.	.....	.....	.....	.....	.....	.....
9.	.....	.....	.....	.....	.....	.....
10.	ORIENTAL BANK OF COMMERCE	Resolution Recovery & Law Cluster, 92E/1, R.K. Market, Munirka, New Delhi-110067	Unsecured-Corporate Guarantee	9,39,10,91,380	9,39,10,91,380	

5. A glance on the aforesaid table makes it patent that the Financial Creditor has already lodged its claim before Mr. Anil Kohli, Liquidator towards the facilities disbursed by the Financial Creditor to the Principal Borrower-Respondent. The said claim of the Financial Creditor was entertained by Mr. Anil Kohli, Liquidator and included in the aforesaid list as is evident from the list itself.



6. The argument of learned counsel for the petitioner that in the liquidation proceedings with respect to Corporate Guarantor namely Moser Baer India Limited, petitioner is treated as unsecured creditor where in the present proceedings it is placed as secured creditor. Such argument does not impress us because placing the petitioner as unsecured creditor with respect to Corporate Guarantor would not make any difference with that of secured creditor. Firstly, the order treating it as unsecured creditor may be challenged, if so advised and secondly the basic rational would continue to be same namely, that there would be duplicacy of claim and acquisition of voting share for the same debt in two separate proceedings. Therefore, the argument has failed to impress us and we have no hesitation to reject the same.

7. 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 that:

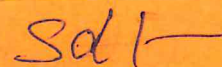
*".....However, once for same set of claim application under Section 7 filed by the 'Financial Creditor' is admitted against one of the*

*'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."*

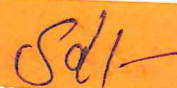
8. On the basis of the facts, statutory provision and precedents discussed above it is evident that the claim lodged by the petitioner-Oriental Bank of Commerce before Mr. Anil Kohli, Liquidator of that Company (namely Corporate Guarantor-Moser Baer India Limited) has already been collated and admitted. 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.

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

10. However, if there is change in law the present order will not prejudice the right of the petitioner.



**(M.M.KUMAR)  
PRESIDENT**



**(DR. V.K SUBBURAJ)  
MEMBER (TECHNICAL)**

10.10.2019  
VINEET