



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

COURT – IV

6.

C.P. (IB)/1191(MB)2020

CORAM:

SHRI MANOJ KUMAR DUBEY
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON 04.10.2022

NAME OF THE PARTIES:

Intec Capital Limited

Vs

Shwet Biotech Private Limited

SECTION: 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

The Court is convened through Video Conference.

1. Mr. Vidit Divya Kumart, Ld. Counsel for the Financial Creditor present.
No representation on the part of the Corporate Debtor.
2. This is a Petition filed by the Intec Capital Limited (“Financial Creditor”) against Shwet Biotech Private Limited (“Corporate Debtor”) u/s 7 of the Code.
3. The Financial Creditor submits that, the Intec Capital Limited is a Non-Banking Financial Institution and is in the business of financing small and medium enterprises through out India.
4. On 31.12.2013 a Loan Agreement was executed between Shwet Realtors Private Limited and Intec Capital Limited for a Financial Loan facility (Machinery Loan) of Rs.3,57,14,286/- for the purpose of business expansion in which Corporate Guarantee was furnished by the Corporate Debtor herein i.e. M/s Shwet Biotech Private Limited. Further, submits that the Loan was sanctioned vide Letter dated 16.12.2013 and was disbursed on 31.12.2013 to the Shwet Realtors Private Limited.



5. The Financial Creditor submits that, the Legal Notice was sent on 07.04.2015 to the Corporate Guarantor invoking the arbitration proceedings and an award dated 14.08.2015 was passed in the arbitral proceedings.
6. Shwet Realtors Private Limited became a NPA on 30.06.2016, further Settlement Agreement was executed between Intec Capital Limited and Shwet Realtors Private Limited on 22.01.2018. However, Shwet Realtors Private Limited failed to make a payment as per agreed repayment scheduled between the parties.
7. Heard the Counsel and on perusal of records, this Bench observed that this Company Petition was filed u/s 7 against Corporate Guarantor Shwet Biotech Private Limited and not Corporate Debtor Shwet Realtors Private Limited.
8. Section 7(1) of IBC, 2016 is as under:-

“A financial creditor either by itself or jointly with 1[other financial creditors, or any other person on behalf of the financial creditor, as may be notified² by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.”
9. This Bench is of the considered view that the present Company Petition u/s 7 is not maintainable as the provision states that a Petition under this section can only be filed against the Corporate Debtor and not the Corporate Guarantor. Hence, the Petition is hereby rejected on the ground of non-maintainability.
10. Accordingly, in view of the above, C.P. (IB)/1191(MB)2020 is **dismissed** without any cost. However, the Counsel for the Financial Creditor is given liberty to file afresh Petition as per the relevant provisions of Law.

Sd/-

MANOJ KUMAR DUBEY
Member (Technical)

/Dubey/

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)