

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-446(ND)/2023

IN THE MATTER OF:

IDBI Trusteeship Service Limited

Reg. Office at:
Asian Building, Ground Floor,
17, R. Kamani Marg, Ballard Estate,
Mumbai- 400001

**... Petitioner/
Financial Creditors**

VERSUS

M/s DSS Infrastructures Private Limited

Reg. Office at:
309, Third Floor, Indraprakash Building,
21, Barakhamba Road, New Delhi – 110001

**... Respondent/
Corporate Debtor**

Order Delivered on: 11.12.2023

SECTION: 7 of IBC, 2016

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Adv. Krishnendu Datta, Adv. Pranjit Bhattacharya,
Adv. Geetika Sharma, Adv. Tarini Khurana, Adv.
Neha

For the Respondent : Sr. Adv. P. Nagesh, Adv. Rajat Juneja, Adv. Sakshi
Kapoor, Adv. Akash

ORDER

PER: SHRI. ASHOK KUMAR BHARDWAJ (J)

The present Application has been preferred by the Applicant IDBI Trusteeship Limited against M/s DSS Infrastructures Pvt. Ltd. who is the Corporate Guarantor of the Principal Borrower Shree Vardhman Buildprop Pvt. Ltd. One of the contentions raised on behalf of the CD is that the Applicant has filed a separate petition under Section 7 of IBC, 2016, against the Principal Borrower, thus the present application should be heard by the same bench/court, before which the application filed against the Principal Borrower is pending. To buttress the plea, he relied upon the provisions of Section 60(2) and (3) of the IBC, 2016. The provision reads thus: -

“60. Adjudicating Authority for corporate persons.

(1)...

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.

(3) An insolvency resolution process or [liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.”

2. The fact of pendency of application under Section 7 of IBC, 2016, against the Principal Borrower for whom the CD (Corporate Guarantor) stood as Guarantor is not denied by the Petitioner. Rather it is the case of the Petitioner itself that the Corporate Debtor furnished Corporate Guarantee dated 22.07.2016 in favour of the Applicant under the Debenture Trust Deed dated 14.06.2016. It is also the case of the Applicant itself that it issued default notices dated 05.08.2019 and 18.11.2020 to Shree Vardhman Buildprop Pvt. Ltd. i.e., the Principal Borrower. When vide notice dated 16.06.2023, Shree Vardhman Buildprop Pvt. Ltd. was called upon to discharge its outstanding liability, vide separate notice dated 06.07.2023 the Bank Guarantee given by the CD/PG was invoked.

3. During the course of hearing, Ld. Counsel for the CD vehemently argued that once CIRP is pending against the Principal Borrower, the present proceedings should also be transferred to the Bench, before which the proceedings against the Principal Borrower are pending.

4. In order to appreciate the expression, 'pending', we may refer to Section 5(11) of the IBC, 2016, i.e., the definition of 'initiation date'. In terms of the definition, the 'initiation date' means the date on which a Financial Creditor, Corporate Applicant or Operational Creditor as the case may be makes an application to the Adjudicating Authority for initiating Corporate Insolvency Resolution Process [or the Prepackaged Insolvency Resolution Process], as the case may be.

5. Indubitably, the Applicant has also preferred an application under Section 7 of IBC, 2016 viz., IB-445/ND/2023 also qua the Corporate Debtor (Principal Borrower). Thus, apparently, applications for initiating CIRP against both the Corporate Guarantor i.e., the Respondent before us and the Principal Borrower (the Corporate Debtor) are pending before different Benches of this Adjudicating Authority. Thus, in terms of the provisions of Section 60(3) of the IBC, 2016, and in the interest of natural justice, the present proceedings need to be transferred to the Bench dealing with the application for initiating CIRP qua Shree Vardhman Buildprop Private Limited.

6. In the wake, the Registry is directed to take appropriate steps, with due deference to the provisions of Section 60(3) of IBC, 2016, and list the present application before the Bench, where the IB-445/ND/2023 is listed, subject to the order of the Hon'ble President. The Court Officer is directed to place a copy of this order before the Registrar forthwith for doing the needful.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)