

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 346 of 2018

Company Appeal (AT) (Insolvency) No. 347 of 2018

IN THE MATTER OF:

Dr. Vishnu Kumar Agarwal

...Appellant

Vs.

M/s. Piramal Enterprises Ltd.

...Respondent

**Present: For Appellant: - Dr. Amit George and Mr. Swaroop George
and Mr. K. Dileep, Advocates**

O R D E R

09.07.2018— Learned counsel appearing on behalf of the appellant, shareholder-cum-Director, submits that 'Sunsystem Institute of Information Technology Pvt. Ltd.' (Corporate Debtor) is a guarantor of the principal borrower (All-India Society for Advance Education & Research) and second guarantor of Corporate Debtor in other case. There is another guarantor for the same 'debt' i.e. 'Sunrise Naturopathy and Resorts Pvt. Ltd.' The 'Financial Creditor' (M/s. Piramal Enterprises Ltd.) has filed a suit against the principal borrower for the same debt amount on the ground of default. The 'Financial Creditor' has filed a winding up petition against the other guarantor, which has been admitted. Again for the same set of 'debt' and 'default', with regard to the other guarantor i.e. 'Sunsystem Institute of Information Technology Pvt. Ltd.' (Corporate Debtor), an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short, the 'I&B Code') has been filed, which has been admitted, which according to him is not maintainable.

This apart, he has grievance with regard to appointment of the 'Interim Resolution Professional', as according to the counsel appearing on behalf of the appellant, he is not qualified. It is also submitted that 'M/s. Piramal Enterprises Ltd.' is not a 'Financial Creditor'.

So far as the appointment of 'Interim Resolution Professional' is concerned, if he is not eligible, we give liberty to the appellant to move before the Adjudicating Authority and bring this fact to its notice.

Other questions arises for consideration in this appeal are :

- (i) Whether respondent –'M/s. Piramal Enterprises Limited' comes within the meaning of 'Financial Creditor' under Section 5(7) & 5(8) of the I&B Code; and
- (ii) Whether in view of pendency of winding up proceedings for the same 'debt' and 'default', against one of the guarantor of the Principal Borrower, the proceeding under Section 7 of the I&B Code is maintainable against the other guarantor?

Let notice be issued on the respondent by Speed Post. Requisite alongwith process fee, if not filed, be filed by tomorrow i.e. 10th July, 2018. If the appellant provides *e-mail* address of the respondent, let notice be also issued through *e-mail*.

Post the case for 'admission' on 27th July, 2018.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

ns/uk