

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COMPANY APPEAL (AT) (INSOLVENCY) NO. 836 of 2023

[Arising out of the Order dated 09th March, 2023 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court – IV), in C.P. (IB)/143(MB)/2021]

IN THE MATTER OF:

Vikram Kumar, Proprietor,
Sourya Containers Leasing Company
Office at Anandpuri, Bibiganj Muzaffarpur,
Bihar – 842001.
Email: Karmveer@lexanalytico.com

...Appellant.

Versus

Aranca (Mumbai) Private Limited
(CIN: U74130MH2004PTC2004PTC145476)
Registered Office Address: 201 & 301, B – Wing,
2nd & 3rd Floor, Supreme Business Park,
Hiranandani Gardens, Powai, Mumbai,
Maharashtra – 400076
Email: ritesh.rawal@aranca.com

...Respondent.

Present

For Appellant: Mr. Dilip Kumar Niranjana, Mr. Amandeep Singh and Mr. Karmveer, Advocates.

For Respondent: Mr. Krishnendu Datta, Sr. Advocate with Mr. Dhiraj Mehtre, Mr. Manpreet Lamba, Ms. Shivani Sharma, Ms. Neha Aggarwal, Advocates for Respondent – Arcana (Mumbai) Pvt. Ltd.

For Intervenors: Mr. Anuj Tiwari & Mr. Swankit Nanda, Advocates.

J U D G E M E N T

[Per; Ajai Das Mehrotra, Member (T)]

1. The present Appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC, 2016') against the Order dated 09.03.2023, passed by the Learned Adjudicating Authority

(National Company Law Tribunal, Mumbai Bench, Court – IV), in C.P.(IB)/143(MB)/2021, by Mr. Vikram Kumar, who is the proprietor of M/s. Sourya Containers Leasing Company (hereinafter referred to as the 'Financial Creditor'). The Respondent is 'M/s. Aranca (Mumbai) Private Limited' (hereinafter referred to as the 'Corporate Guarantor'), who had issued irrevocable Deed of Guarantee in favour of the Appellant against the borrowing raised by Meher Miracles Pvt. Ltd. (hereinafter referred to as the 'Borrower').

2. The Borrower had raised funds for 'Celebrity Football Match' to be held at Dubai. Since the Borrower had not repaid the loan, the Appellant had invoked the Guarantee seeking repayment from the Guarantor. As the Guarantor had not paid in response to invocation of Guarantee, the Appellant had filed Application under Section 7 of the IBC, 2016 for initiation of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Guarantor, the Respondent herein. The AA (NCLT Mumbai, Court – IV) vide their Order dated 09.03.2023 in C.P. (IB) No. 143(MB)/2021 had dismissed the Application as not maintainable on the grounds that Financial Creditor had invoked the Corporate Guarantee on 25.08.2020, which is falling under the period specified under Section 10-A of the IBC, 2016 and for which CIRP cannot be initiated.

3. Learned Counsel for the Appellant submitted that the AA erred in taking date of invocation of Guarantee and the Guarantee was invoked vide letter dated 11.06.2019 given at Page 176 and 177 of the Appeal Paper Book.

4. Learned Sr. Counsel appearing for the Respondent/Corporate Guarantor took us through Part IV of Form – 1, being Application under Section 7 of the Appellant before the AA, wherein the Appellant had himself

submitted that the Deed of Guarantee was invoked on 25.08.2020. He expressly pointed to Point No. (ix) wherein the Appellant had submitted before the AA as under:

“(ix) On 25.08.2020, the Applicant issued Notice for invocation of the Deed of Guarantee dated 09.01.2017 and demanded of re-payment of the loan amount along with commitment charges, interest charges and taxes being Rs.3,94,99,355.00 (Rupees three crore ninety four lakhs ninety nine thousand three hundred and fifty five only) computed as on 24.08.2020 against the default in repayment of loan by the Borrower, Mehar Miracles Private Limited.”

5. He also drew our attention to Page 254, Vol II of the Appeal Paper Book giving calculation of Claim wherein the interest due has been calculated till 24.08.2020. Learned Sr. Counsel stated that the letter dated 11.06.2019 issued by the Appellant was addressed to Mr. Hemendra Aran and Mrs. Gitanjali Sinha and was not addressed to the Corporate Guarantor. He drew our attention to pages 178 and 179 of the Appeal Paper Book wherein the Respondent had drawn attention of the Appellant’s Advocate to the fact that Mr. Hemendra Aran and Mrs. Gitanjali Sinha are not directors of the Respondent. Thus, he submitted that the said letter dated 11.06.2019 cannot be said to be invocation of Guarantee given by the Corporate Guarantor.

6. In response to opportunity given to both sides to file Written Submission within seven days vide daily Order dated 31.08.2023, both the Appellant and Respondent have filed Written Submissions, which are reiteration of submissions made earlier.

7. We have heard both the sides and have gone through the documents on record. Notice for invocation of Bank Guarantee addressed to the Corporate Guarantor, the Respondent herein was issued by the Advocate of the Appellant on 25.08.2020, which is available from Page 180 to 185 of the

Appeal Paper Book. In this Notice, nowhere the Appellant had mentioned the earlier letter dated 11.06.2019. The earlier letter dated 11.06.2019 was addressed to Mr. Hemendra Aran and Mrs. Gitanjali Sinha in their personal names as Directors of Aranca Mumbai Pvt. Limited. However, both the persons were not Directors of Aranca Mumbai Pvt. Limited on the said date and this letter cannot be treated as invocation of deed of guarantee. Further, in the formal Notice for invocation of Deed of Guarantee dated 25.08.2020, the Appellant has not even referred to this letter dated 11.06.2019.

8. Before the AA, in Form – I, Part IV, the Appellant had clearly stated that the Bank Guarantee was invoked on 25.08.2020. Since the Corporate Guarantee was invoked on 25.08.2020, the debt became due for payment thereafter. As per the provisions of Section 10-A of IBC, 2016, which are reproduced below for ready reference, CIRP cannot be initiated for defaults arising in 12 months period beginning 25.03.2020:

“Section 10A: Suspension of initiation of corporate insolvency resolution process.

[10A. Notwithstanding anything contained in sections 2 9 and 10 no application for Initiation corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding year from such date as may be notified in this behalf.

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation For the removal of doubts, it is hereby clarified that the provisions of this section not apply to any default committed under the said sections before 25th March 2020.”

(Through Notification dated 24.09.2020 and 22.12.2020, the period was extended and the cumulative period was twelve months w.e.f. 25.03.2020.)

9. Since the Deed of Guarantee was invoked on 25.08.2020, CIRP cannot be initiated for default in repayment as the default arises in the period excluded by provisions of Section 10A of IBC, 2016. The AA has rightly held that the default falls within the specified period in Section 10-A of the IBC, 2016 and the Application U/s 7 of IBC, 2016 is non maintainable. We have not gone into the merits of the claim of the Appellant and our decision herein should not prejudice the Claim of the Appellant before any Authority.

10. Hence, this Appeal is dismissed. No order as to costs.

[Justice Anant Bijay Singh]
Member (Judicial)

[Mr. Ajai Das Mehrotra]
Member (Technical)

**Principal Bench,
New Delhi
14th September, 2023**

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