



2024 PLRonline 0007 (SC)
[#ID 418700]

Insolvency and Bankruptcy Code, 2016, Section 10A - When the Financial Creditor has invoked the corporate guarantee of the corporate guarantor by the notice dated 16.10.2020 and asked the corporate guarantor to make the payment within seven days from the receipt of the notice, the default has occurred during the 10A period.

Guarantor - Invocation of the guarantee deed - Liability of corporate guarantor although is coextensive of the Principal Borrower but when the Guarantee requires invocation of the guarantee deed, default on the guarantor shall be the date when corporate guarantee has been invoked.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH, NEW
DELHI

Company Appeal (AT) (Insolvency) No. 920 of 2023

Mudhit Madanlal Gupta

...Appellant

Versus

Supreme Constructions and Developers Pvt. Ltd.

...Respondents

For Appellant: Mr. Kanishk Ahuja, Advocate

ORDER

26.07.2023: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 16.05.2023 by which Section 7 Application filed by the Appellant has been rejected as barred by Section 10A.

3. Corporate Debtor is corporate guarantor whose guarantee was invoked by the Appellant by notice dated 16.10.2020 which is filed as Page 77 of the Appeal Paper Book. The Adjudicating Authority taking into consideration the notice invoking guarantee held that the default on the part of the Corporate Debtor fell between 10 A period hence dismissed the Application as barred by time.

4. Learned Counsel for the Appellant challenging the Order contends that the Adjudicating Authority committed error in accepting the date of default as 16.10.2020 whereas date of default was 02/07/2019 as has been noted by the Adjudicating Authority itself.

5. We have considered the submissions of Learned Counsel for the Appellant and have perused the record.

6. The notice which has been brought on record by the Appellant is at page 77 reads as under:

“To

Date; 16th Oct 2020

- 1) SUPREME CONSTRUCTION AND DEVELOPERS PRIVATE LIMITED,
U45200MH2005PTC157311
OFF-12, CTS NO – 410, S.I.C.H.S. Ltd
Next to Acres Club, Hemu Kalani Marg,
Chembur Mumbai Mh – 400071
hodaccounts@clan.today
rajukanchwala@yahoo.com
- 2) MR. LALIT KUMAR SHYAM (earlier
Known as Lalit Shyam Tecchandani), 6-C- 5,
Basant Park, R.C. Marg, Chembur
Mumbai 400071
it@clan.today

Ref:- Loan Cum Guarantee Agreement dated 2nd April, 2018

Subject:-Notice of Demand and Notice for invoking Guarantee.

Dear Sir,

1) I had lent to EMGEE ENCLAVE LLP, a Limited Liability Partnership duly registered under the provisions Limited Liability Partnership Act 2012, having LLPIN No. AAG-9873, having its registered office at A-4, Bldg No 8, Basant Park CHS Ltd, RC Marg Mahul Road, Opp Police Station, Chembur (E) Mumbai Mumbai City MH 400071 IN (“Borrower”), a sum of INR 6,95,23,602/- (Indian Rupees Six Crore Ninety-Five Lakhs Twenty-Three Thousand Six Hundred and Two only), (“said loan”) receipt and debt whereof the borrower and you, addressee nos. 1 and 2, have confirmed and acknowledged under Loan cum Guarantee Agreement dated 02nd April 2018 (said “Agreement”)

”

.....

7. When the Financial Creditor has invoked the corporate guarantee of the corporate guarantor by the notice dated 16.10.2020 and asked the corporate guarantor to make the payment within seven days from the receipt of the notice, the default has occurred during the 10A period and the default dated 02.07.2019 which is default alleged against the Principal Borrower can not be put to a default for corporate guarantor. Liability of corporate guarantor although is coextensive of the Principal Borrower but when the Guarantee requires invocation of the guarantee deed, default on the guarantor shall be the date when corporate guarantee has been invoked.

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8. We thus do not find any error in the Order of the Adjudicating Authority dismissing Section 7 Application as barred by time. We make it clear that dismissal of Section 7 Application shall not preclude the Appellant to take other recourse in accordance with law. The Appeal is dismissed.

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