

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 107
(IB)-356(PB)/2019

IN THE MATTER OF:

TUF Metallurgical (P) Ltd.

.... Applicant/petitioner

v.

Wadhwa Glass Processors (P) Ltd.

.... Respondent

Under Section 7 of IBC.

Order delivered on 27.03.2019

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR

HON'BLE PRESIDENT

SH. S. K. MOHAPATRA

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant/petitioner: Mr. Debopriya Moulik, Mr. Sushant Mahajan,
Advs.

ORDER

The instant petition has been filed by the TUF Metallurgical (P) Ltd. – financial creditor against Wadhwa Glass Processors (P) Ltd. Despite the fact that another petition against the principal debtor namely Albus India Limited has already been admitted on 02.01.2019 being CP No. (IB)-1089(PB)/2018. The present petition is filed against the corporate guarantor. According to the order passed by the Hon'ble Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 347/2018 decided on 08.01.2019, no second petition would be maintainable for the same set of claim and default. In para 32, the following pertinent observations have been made which read thus:-



“32. There is no bar in the ‘I&B Code’ for filing simultaneously two applications under Section 7 against the ‘Principal Borrower’ as well as the ‘Corporate Guarantor(s)’ or against both the ‘Guarantors’. However, once for same set of claim application under Section 7 filed by the ‘Financial Creditor’ is admitted against one of the ‘Corporate Debtor’ (‘Principal Borrower’ or ‘Corporate Guarantor(s)’), second application by the same ‘Financial Creditor’ for same set of claim and default cannot be admitted against the other ‘Corporate Debtor’ (the ‘Corporate Guarantor(s)’ or the ‘Principal Borrower’). Further, though there is a provision to file joint application under Section 7 by the ‘Financial Creditors’, no application can be filed by the ‘Financial Creditor’ against two or more ‘Corporate Debtors’ on the ground of joint liability (‘Principal Borrower’ and one ‘Corporate Guarantor’, or ‘Principal Borrower’ or two ‘Corporate Guarantors’ or one ‘Corporate Guarantor’ and other ‘Corporate Guarantor’), till it is shown that the ‘Corporate Debtors’ combinedly are joint venture company.”

In view of the above, the prayer of the petitioner is to pursue its claim against the guarantor in accordance with law, as per the CIR Process, which has already been initiated.

The present petition is not maintainable and is dismissed as such.

Sd/-

(M.M.KUMAR)
PRESIDENT

Sd/-

(S. K. MOHAPATRA)
MEMBER (TECHNICAL)