

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-1167(PB)/2019

IN THE MATTER OF:

IFCI Limited

.....Financial Creditor

v.

M/s. ACCIL Hospitality Private LimitedCorporate Debtor

SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016

Judgment delivered on 21.10.2019

CORAM:

CHIEF JUSTICE (RTD.) M.M.KUMAR
HON'BLE PRESIDENT

S.K. MOHAPATRA
HON'BLE MEMBER (T)

PRESENT:

For the Financial Creditor:

Mr. Nusrat Hossain, Advocate

For the Corporate Debtor:

Mr. Ajay Kumar, Advocate

M.M.KUMAR, PRESIDENT

JUDGMENT

The 'Financial Creditor'-IFCI Limited has filed the instant petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of M/s. ACCIL Hospitality Private Limited.

2. The Corporate Debtor-M/s. ACCIL Hospitality Private Limited is a company registered under the provisions of the Companies Act, 1956 and was incorporated on 11.08.2003. The identification

number of the Corporate Debtor is U55101DL2003PTC121747 and its registered office is situated at 204, Nirmal Tower, 26 Barakhamba Road, Cannught Place, New Delhi-110001.

3. The pleaded case of the petitioner is that a 'Corporate Loan Agreement' dated August 22, 2014 was entered into by 'Asian Colour Coated Ispat Limited (hereinafter referred to as "**Principal Borrower**")' with the Financial Creditor for grant of loan facility amounting to Rs. 150 crores which was guaranteed by the Corporate Debtor-M/s. ACCIL Hospitality Private Limited in the shape of deed of Corporate Guarantee. Further the said loan was guaranteed by deed of personal guarantees executed by Shri Pradeep Agarwal and Shri Vikas Agarwal, promoters/Directors of the Corporate Debtor.

4. The aforesaid loan amount of Rs. 150 crores was disbursed in two tranches. The Principal Borrower drew the first tranche of Rs. 35,07,00,000/- on 28.08.2014 and thereafter second tranche of Rs. 114,93,00,000/- on 02.09.2014.

5. Notice of the petition was issued to the Respondent.

6. After service of the notice of the petition, at the outset learned counsel for the Corporate Debtor has raised a preliminary objection with regard to maintainability of the petition asserting that the Corporate Insolvency Resolution Process was initiated in respect of

the 'Principal Borrower' namely Asian Colour Coated Ispat Limited on 20.07.2018 in a petition under Section 7 of the Code filed by State Bank of India (C.P. No. IB-50(PB)/2018) and Mr. Kuldeep Kumar Bassi was appointed as an Interim Resolution Professional. He invited claims and the Financial Creditor lodged its claim along with proof claiming that the applicant is a Financial Creditor.

7. At this stage it would be profitable to read one of the updated list of claims of Financial Creditors dated 22.05.2019 filed by the Respondent with the preliminary objections prepared by Mr. Kuldeep Kumar Bassi, Resolution Professional in relation to the Principal Borrower-Asian Colour Coated Ispat Limited against whom CIR Process was initiated vide order dated 20.07.2018 and the same reads as under:

"Annexure 1 : List of Financial Creditors for Asian Colour Coated Ispat Limited (Term Loan and Working Capital lenders for ACCIL)

S. No.	Name of Financial Creditor	Amount as per Form C (INR)	Amount admitted (INR)
1.
2.
3.
4.

5.
6.
7.
8.	IFCI Ltd.	2,27,48,91,019	2,27,48,91,019

8. A glance on the aforesaid table makes it patent that the Financial Creditor has already lodged its claim before Mr. Kuldeep Kumar Bassi, RP towards the facilities disbursed by the Financial Creditor to the Principal Borrower. The said claim of the Financial Creditor was entertained by Mr. Kuldeep Kumar Bassi, RP and included in the aforesaid list as is evident from the list itself.

9. A rejoinder to the preliminary objections has been filed by the Financial Creditor reiterating the submissions made in the petition and controverting the assertions in the preliminary objections.

10. We have heard learned counsel for the parties and have also perused the record.

11. The question that arises for consideration is whether the self-same claim could be made the basis for filing a petition under Section 7 of the Code for triggering the CIR Process. The question is no longer *res integra*. In, **Dr. Vishnu Kumar Agarwal v. M/s. Piramal**

Enterprises Ltd., Company Appeal (AT) (Insolvency) No. 346 of

2018 decided on 08.01.2019, the Learned Appellate Tribunal held that:


“.....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.”


12. On the basis of the facts, statutory provision and precedents discussed above it is evident that the claim lodged by the petitioner-IFCI Limited before Mr. Kuldeep Kumar Bassi, RP of that Company (namely Principal Borrower-Asian Colour Coated Ispat Limited) has already been collated and admitted. This cannot be again made the basis for triggering Corporate Insolvency Resolution Process in the present proceeding and it is not permissible as per the law laid down

in Dr. Vishnu Kumar Agarwal case (supra). Therefore, on account of duplicacy of the claims the petition cannot be entertained.

13. As a sequel to the above discussion this petition fails and the same is dismissed.

14. However, if there is change in law the present order will not prejudice the right of the petitioner.


(M.M.KUMAR)^{21.10.}
PRESIDENT 2019


(S.K. MOHAPATRA)
MEMBER (T)

VINEET
21.10.2019