NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 180 of 2025

(Arising out of Order dated 17.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-II in CP(IB) 51/MB/2024)

IN THE MATTER OF:

Deepak Raheja & Anr. ...Appellants

Versus

IDBI Trusteeship Services Ltd. & Anr. ...Respondents

Present:

For Appellants	:	**Mr. Ajesh K. Shankar, Mr. Rohit Jolley and Mr. Raghav Sachdev, Advocates.**
For Respondents	:	**Ms. Honey Satpal, Advocate for RP.** **Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra and Mr. Kunal Kochar, Advocates.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed by the Suspended Director of the Corporate Debtor ("**CD**") - Advantage Raheja Hotels Private Limited challenging the order dated 17.12.2024 passed by National Company Law Tribunal, Mumbai Bench, Court-II admitting Section 7 application filed by IDBI Trusteeship Services Limited ("**IDBI Trusteeship**"). By order dated 17.12.2024, Corporate Insolvency Resolution Process ("**CIRP**") has been commenced against the CD and Shri Jayesh Natvarlal Sanghrajka has been appointed as IRP. Aggrieved by which order, this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

(i) On 26.12.2017, Piramal Capital and Housing Finance Ltd. ("**PCHFL**") entered into a Loan Agreement with Gstaad Hotels ("**Gstaad Hotels**") Private Limited and Neo Capricorn Plaza Private Limited ("**Neo Capricorn**") as Borrowers. On 26.12.2017 a Security Trustee Agreement was entered between Gstaad Hotels, Neo Capricorn, PCHFL and the Financial Creditor (IDBI Trusteeship). On 26.12.2017 a Deed of Guarantee ("Corporate Guarantee") was executed by the CD – Advantage Raheja Hotels Pvt. Ltd. in favour of Financial Creditor, guaranteeing the repayment of the loan. There have been further facilities extended to the Borrowers under ECLGS-1 and ECLGS-2 Facility.

(ii) By Deed of Assignment on 27.12.2022, all rights of Lenders were assigned to M/s Omkara Assets Reconstruction Private Limited ("**Omkara**").

(iii) On default being committed by Gstaad Hotels and Neo Capricorn, Omkara issued a legal notice dated 15.02.2023 and initiated proceedings under Section 7 by filing CP(IB) Nos.290 and 291 of 2023 against the Principal Borrowers.

(iv) The Adjudicating Authority admitted Section 7 application on 09.01.2024, against which order, the Appeal(s) filed before this Tribunal being Company Appeal (AT) (Ins.) Nos.165 and 212 of 2024, were allowed by this Tribunal on 08.01.2025 by setting aside order admitting Section 7 application.

Proceedings under Section 7 were revived before the Adjudicating Authority to be heard and decided afresh.

(v) The Adjudicating Authority by the impugned order dated 17.12.2024 admitted Section 7 application against the Corporate Guarantor. The Adjudicating Authority also in the impugned order noticed that by order dated 09.01.2024, both the Principal Borrowers have already been admitted into CIRP. Challenging the order dated 17.12.2024 this Appeal has been filed.

3. The Appeal came to be heard on 30.01.2025, on which date, following order was passed by this Tribunal:

> "**30.01.2025: <u>I.A. No. 717 of 2025</u>:-** This is an application praying for condonation of 6 days' delay in filing the Appeal. Counsel for the Appellant submits that there were voluminous documents and time was taken for preparing the Appeal. Cause shown sufficient. Delay is condoned.
>
> **<u>Company Appeal (AT) (Insolvency) No. 180 of 2025</u>**
>
> Learned Counsel for the Appellant submits that by the impugned order, the Adjudicating Authority has admitted Section 7 application against the Corporate Guarantor. It is submitted that against the admission of Section 7 application of the principal borrower, Appeals were filed in this Tribunal being Company Appeal (AT) (Insolvency) Nos. 165 of 2024 and 212 of 2024 which both Appeals were allowed by judgment of this Tribunal dated 08.01.2025. It is submitted that the Adjudicating Authority in the impugned order has relied on the admission of the Section 7 application against the principal borrower which admission order having been set aside the impugned order cannot be

sustained. Counsel for the Appellant submitted that the CoC has already been constituted in pursuance of the impugned order.

2. Submissions of the Counsel for the Appellant needs scrutiny. Let 'Notice' be issued to the Respondents through 'Speed Post'. Let the requisites together with process fee be filed within three days from today. The Appellant is required to provide the e-mail address of the Respondents and in that mode also, the service can be effected. The Appellant is also required to furnish the Mobile No. of the Respondents to the 'Office of the Registry'.

3. Let reply be filed within three weeks.

4. List the Appeal on 17.03.2025.

In the meantime, no Form G shall be issued. CIRP process may go on."

4. Reply has been filed in this Appeal, to which rejoinder affidavit has also been filed.

5. During hearing of this Appeal, learned Counsel for the Respondent submitted that Section 7 application, which remanded back to the Adjudicating Authority for fresh consideration by this Tribunal by order dated 08.01.2025, were considered and admitted by the Adjudicating Authority vide order dated 08.07.2025. Challenging the said order, Company Appeal (AT) (Ins.) Nos.1039 and 1040 of 2025 were filed in this Tribunal, which have now been dismissed by this Tribunal vide its order dated 19.08.2025. The CIRP against Principal Borrower having been admitted, which has also been confirmed by this Tribunal, no error can be found against the admission of CIRP against the Corporate Guarantor by the Adjudicating Authority vide order dated 17.12.2024. It is submitted

by learned Counsel for the Respondent that in view of order of admission against Principal Borrower having been made final, this Appeal deserves to be dismissed.

6. We have heard Shri Ajesh K. Shankar, learned Counsel appearing for the Appellant and Shri Abhishek Anand, learned Counsel appearing for the Respondent.

7. Learned Counsel for the Appellant in support of the Appeal raised only one submission. The submission is that IDBI Trusteeship was not authorized to file Section 7 application against the CD. It is submitted that any instruction given by Piramal Capital and Housing Finance Ltd, the original Lender is meaningless, there being no authorisation in favour of IDBI Trusteeship to initiate Section 7 application against the CD, the entire proceedings is unauthorized and liable to be rejected on this ground alone. Learned Counsel for the Appellant in support of his submission that there is no *locus* to file application under Section 7 of the IBC without a valid authorization has relied on the judgment in ***Malavika Hegde vs. IDBI Trusteeship Services Ltd. and Anr. – (2025) SCC OnLine NCLAT 422*** and ***M Sai Eswara Swamy vs. Siti Vision Digital Media Pvt. Ltd. – 2021 SCC OnLine NCLAT 3444***.

8. Learned Counsel appearing for the Respondent refuting the submission of the Appellant submits that Omkara took assignment from the original Lender, who has also sent an email authorizing the IDBI Trusteeship to initiate proceedings under Section 7 against the CD. Learned Counsel for the Respondent referred to email dated 23.03.2023.

9. We have considered the submissions of learned Counsel for the parties and have perused the record.

10. It is relevant to notice that in the impugned order, the contention raised by the CD regarding competency of IDBI Trusteeship to present Section 7 application was considered and rejected in paragraph 33 of the impugned order. Paragraph 33 of the impugned order is as follows:

> "**33.** So far as the first contentions raised on behalf of the Corporate Debtor with regard to the competency of the Financial Creditor to file the present Petition in the capacity of Security Trustee is concerned, as per clause 5.2 of the Security Trustee Agreement dated 26.12.2017, the Financial Creditor is authorised to act upon the receipt of the written instructions from the lender. The Financial Creditor received written instructions from Omkara Assets Reconstruction Private Limited vide email dated 15.03.2023 which is annexed as Exhibit (B) to the affidavit in rejoinder filed by the Petitioner. It, therefore, cannot be argued with conviction that the present Petition has been filed by the Security Trustee without any authorisation from the lender. Even otherwise, it cannot be said by any stretch of imagination that merely on account of the assignment of loan by the original lender in favour of Omkara Assets Reconstruction Private Limited, the Security Trustee Agreement would come to an end. Rather with the assignment of the loan, Omkara Assets Reconstruction Private Limited stood replaced in place of the original lender whereas the Financial Creditor continued to act as Security Trustee. No evidence has been brought on record by the Corporate Debtor to support the contentions that the Security Trustee Agreement came to an end with the assignment of the loan in favour of Omkara Assets Reconstruction Private Limited. Even otherwise through the very deed of guarantee that was executed

between the Corporate Debtor and the Financial Creditor i.e. IDBI Trusteeship Services Limited, the latter was appointed as Security Trustee. Having voluntarily executed the guarantee deed in favour of the Financial Creditor, the Corporate Debtor cannot be heard harping that the Petitioner in the capacity of trustee is not authorised or competent to file the present Petition."

11. The Adjudicating Authority in the impugned order has noticed Clause 5.2 of the Security Trustee Agreement dated 26.12.2017, where Financial Creditor is authorized to act upon the receipt of the written instructions from the Lender. Finding has been recorded that Financial Creditor has received written instructions from the Omkara Assets Reconstruction Private Limited vide email dated 15.03.2023, which was brought on the record before the Adjudicating Authority, as has been noticed in paragraph-33. There being thus, written instructions dated 15.03.2023, we fail to see any lack of authority in the Financial Creditor to initiate Section 7 proceedings. The letter dated 15.03.2023 is part of record at page 4060 of Vol.17 of the Appeal, which email has been sent by Omkara Asset Reconstruction to IDBI Trusteeship, which email is as follows:

> "Jasmine Gohiljasmine.gohil@omkaraarc.com Wed, Mar 15, 2023 at 5:18 PM
>
> To: Jinal©idbitrustee.com
>
> Cc: Shubhodeep Banerjee <s.banerjee@omkaraarc.com>, Soniya Gurudinasinghani <soniya@omkaraarc.com>, Kanika Maheshwari <kanika@omkaraarc.com>, Jigar Patel <jigar.patel@omkaraarc.com>
>
> Dear Jinal,

With reference to the captioned account, requesting you to please issue the attached Recall and Personal Guarantee Invocation Notice at the earliest.

Thanks & Regards,

Jasmine Gohil | Manager |
Omkara Assets Reconstruction Private Limited"
C/515, Kanakia Zillion, Junction of L,B,S Road & CST Road, BKC Annexe, Near Equinox, Kurla (West), Mumbai – 400070

Mobile: +91 9833774478 | Board: +91 2226544000 | Email: jasmine,gohil@omkaraarc,com | www,omkaraarc.com

2 attachments
PG invocation – IDBI – 14.04.2023 (revised).docx
CG Invocation – IDBI – 14.03.2023 (revided).docx"

12. Thus, Omkara Assets Reconstruction Pvt. Ltd. has given written instructions to the Financial Creditor to issue Recall and Personal Guarantee Invocation Notice at the earliest and also the subsequent email dated 23.03.2023. In the reply, which has been filed by IDBI Trusteeship, it has clearly been pleaded that Omkara has given instructions to the IDBI Trusteeship. In paragraphs 25 and 26 of the reply, following have been pleaded:

"**25.** In furtherance of the rights and obligations under the Security Trustee Agreement, the Financial Creditor received written instructions from Omkara, the assignee of the Loan, on 15.03.2023, directing the Financial Creditor to issue notices invoking the Corporate Guarantee. The said written communication also contained the draft of the Invocation Notice, which was thereafter issued by the Financial Creditor to the Corporate Debtor in its capacity as Security Trustee. The relevant extract of the same is reproduced herein below:

"*Dear Jinal,*

With reference to the captioned account, requesting you to please issue the attached

> ***Recall and Personal Guarantee Invocation Notice at the earliest.***"

> **26.** Further, vide email dated 23.03.2023, the original lender PCHFL also informed the Financial Creditor that Omkara intended to initiate insolvency proceedings against the Corporate Debtor through the Financial Creditor, thereby expressly authorising and directing the Financial Creditor to act on its behalf. The relevant extract of the same is reproduced herein below:
>
> > *"Hi Anjalee*
> > *As discussed, Omkara ARC (the assignor of the loans) are initiating NCLT application against CG & PG providers for GSTAAD & Neo Capricorn.* ***As per discussion with the legal team, this is to be done via IDBI Trustee."***
>
> Copy of emails dated 15.03.2023 and 23.03.2024 are annexed herewith and marked as ANNEXURE R-5 (COLLY)."

13. Thus, we do not see any substance in the submission of the Appellant that there was no authorisation by Omkara to the IDBI Trusteeship to initiate proceedings under Section 7. Section 7 application, thus, was initiated on the basis of entitlement of the IDBI Trusteeship through the Trusteeship Agreement as well as specific written aurhorisation by the Omkara subsequent to assignment in its favour.

14. Coming to the citations relied by the Appellant in support of his submission that there is no *locus* to file application under Section 7 without valid authorisation, suffice it to say that present is a case where valid authorisation has been both pleaded and proved. When on the facts of the case, authorisation has been pleaded and proved, the judgments

relied by learned Counsel for the Appellant do not come to any help to the Appellant.

15. We, thus, do not find any error in the order admitting Section 7 application against the Corporate Guarantors. As noted above, initiation of the CIRP against the Principal Borrowers has already been affirmed by this Tribunal by dismissing the Appeal(s) filed by the Suspended Directors. No infirmity can be found in initiation of CIRP against the Corporate Guarantors. We do not find any merit in the Appeal. The Appeal is dismissed. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

12th September, 2025

Ashwani