

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 198 of 2023

IN THE MATTER OF:

Aditya Khaitan

...Appellant

Versus

Ritesh Prakash Aditya & Ors.

...Respondents

Present:

For Appellant: Mr. Abhinav Vasisth, Sr. Advocate with Mr. Abhijeet Sinha, Mr. Rishav Banerjee, Mr. Ajay Bhargana, Mr. Ritoban Sarkar, Mr. Siddhart Kumar, Mr. Akash Chatterjee, Mr. Aditya Shukla, Advocates

For Respondent: Mr. Krishnendu Datta, Sr. Advocate for R-2
Mr. Manmeet Singh, Mr. Anugrah Robin Frey, Mr. Vishal Bijlani, Advocates for R-1
Mr. Pradeep Rai, Sr. Advocate with Mr. A. Singh, Mr. Gaurav H Sethi, Advocates for Intervener-Assam Chai Majdoor Sangh.

ORDER

22.02.2023: Heard Learned Counsel for the Appellant as well as Learned Counsel for the Respondents.

2. Learned Sr. Counsel for the Appellant submits that the Appellant had given a Letter of Comfort and Shortfall Undertaking both of which cannot be treated to be any Corporate Guarantee. It is submitted that in so far as the indemnity is provided in shortfall undertaking, the said clause was never invoked hence there shall be no financial debt and application filed under Section 7 could not have been maintainable.

3. Learned Sr. Counsel for the Respondent No. 2 refuting the submissions of Learned Sr. Counsel for the Appellant contends that by the Letter of Comfort and Shortfall Undertaking can be treated as guarantee and in any view of the matter it was covered by Section 5(8)(i) there being clear indemnity in Shortfall Undertaking. It is further submitted that Indemnity was also invoked.

4. Submissions raised by Learned Counsel for the parties need consideration. Issue notice to the Respondents through Speed Post as well as Email. Requisites along with process fee, if not filed, be filed, within two days. Learned Sr. Counsel appearing for Respondent No. 1/IRP accepts notice. Learned Sr. Counsel-Mr. Krishnendu Datta appearing for Respondent No. 2 also accepts notice.

5. Respondents to file Reply-Affidavits within two weeks. Rejoinder may be filed within two weeks, thereafter.

6. List this Appeal on **27th March, 2023**. In the meantime, in pursuance of the Impugned Order passed by the Adjudicating Authority dated 10th February, 2023, IRP shall not take any further steps in the Corporate Insolvency Resolution Process. However Corporate Debtor shall be run as a going concern including the day to day operations. IRP shall run the same with the assistance of the Suspended Directors/Officers/Employees of the Corporate Debtor.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Basant/nn

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