

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL
BENCH, NEW DELHI Company Appeal (AT) (Insolvency) No. 113 of
2021**

In the matter of:

Vekas Kumar Garg

....Appellant

Vs.

DMI Finance Pvt. Ltd. & Anr.

....Respondents

Present:

**Appellant: Mr. Dhruv Gupta, Ms. Preeti Kashyap, Mr. Ankit
Sharma, Advocates.**

Respondents:

ORDER

(Through Virtual Mode)

18.02.2021: Appellant- Mr. Vekas Kumar Garg seeking impleadment as a necessary party in CP IB-2115/ND/2019 pending before the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court-VI, at the pre-admission stage under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) is aggrieved of the impugned order dated 10th December, 2020 by virtue whereof its application for impleadment came to be rejected on the ground that he was not necessary party to the proceedings. The impugned order is assailed on the ground that the Appellant is the Resolution Professional of two companies namely— 'M/s. Ninex Developers Limited' ("NDL" for short) which is facing the Corporate Insolvency Resolution Process (CIRP) before the Adjudicating Authority (NCLT), Principal Bench, New Delhi in C.P. No. (IB) 281(PB)/2019 and also in the CIRP of 'M/s. Redtopaz Real Estate Pvt. Ltd.' ("RREPL" for short), CIRP of which is also pending before the Adjudicating Authority (NCLT), Bench-II, New Delhi in CP No. (IB)-667(ND) of 2019.

Contd/-.....

2. It is submitted on behalf of the Appellant that the main Company Petition is pending adjudication in which Respondent No.1 is seeking triggering of CIRP against Respondent No.2. It is further submitted that if CIRP is commenced against Respondent No.2, NDL holding 46.59% equity shares would be the direct sufferer which is already undergoing a CIRP. Besides the interest of many homebuyers will be in jeopardy. It is further submitted that the application under Section 7 pending consideration before the Adjudicating Authority is not maintainable in view of the Judgment passed by this Appellate Tribunal in ***“Dr. Vishnu Kumar Agarwal vs. M/s. Piramal Enterprises Ltd.- Company Appeal (AT) (Insolvency) No. 346/2018”***.

3. After hearing learned counsel for the Appellant and going through the record, we are of the view that the ground projected by the Appellant in his capacity as Resolution Professional of NDL for seeking impleadment in CP IB-2115/ND/2019 pending consideration before the Adjudicating Authority does not warrant impleadment of Appellant as party Respondent. In an application under Section 7, the Financial Creditor and the Corporate Debtor alone are the necessary party and the Adjudicating Authority is, at the pre-admission stage, only required to satisfy itself that there is a financial debt in respect whereof the Corporate Debtor has committed a default warranting triggering of CIRP. The Adjudicating Authority is required to satisfy itself in regard to there being a financial debt and default thereof on the part of the Corporate Debtor besides the application being complete as mandated under Section 7(5) of the 'I&B Code' and then pass an order of admission or rejection on merit as mandated under sub-section (4) of Section 7 within 14 days. No third party intervention is contemplated at that stage.

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4. No lengthy hearing is warranted at the pre-admission stage nor can the dispute in regard to shareholding or *inter se* directorial issue be entertained.

5. Viewed from this perspective, we find no legal infirmity in the impugned order passed by the Adjudicating Authority. The course open to Appellant would be to apprise the IRP of the admission of the claim in CIRP of NDL if the application under Section 7 pending before the Adjudicating Authority is admitted and IRP is appointed. Such situation may not arise if the Adjudicating Authority is not satisfied about debt and default.

The appeal is accordingly dismissed. However, there shall be no order as to costs.



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**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

AR/g