

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 518 / 2026
(IA No. 1473 / 2026)

In the matter of:

**R. Radha,
Director (Suspended) and Promoter,
Hotel Radha Prasad Pvt Ltd**

... Appellant

V

S. Sephulohniam & Anr.

... Respondents

Present :

For Appellant : Mr. V. Raghavachari, Senior Advocate
For Mr. J. Manivannan &
Ms. B. Birunda, Advocates

For Respondents : Mr. TK. Bhaskar, Advocate
For Ms. A. Vidya &
Mr. Ponnappa Bharati, Advocates for R1
Mr. P. Eswaramoorthy, IRP

ORDER
(Hybrid Mode)

29.09.2026:

1) This appeal is preferred by the suspended director of the corporate debtor, who challenges the order of the Adjudicating Authority drawing the corporate debtor (M/s. Hotel Radha Prasad Pvt Ltd) to CIRP under Section 7 of the IBC.

- a) The 1st respondent herein has entered into an agreement to advance ₹12 crores, to a firm named Hotel Radha Prasad. The amounts were disbursed between 16.07.2018 and 02.08.2018.

- b) Hotel Radha Prasad, the principal borrower is a partnership firm comprising interalia, the corporate debtor, Mr. Radha, Mr. Prakash and as partners. Indeed, the appellant herein, who is a suspended director of the corporate debtor is also a partner of the firm.
- c) On 16.07.2018, a deed of guarantee was entered into by the 3 guarantors, who has earlier stated to have constituted the partnership firm. Needless to mention that the corporate debtor though a partner, has also participated in the execution of the deed of guarantee.
- d) According to the 1st respondent, in terms of clause 2 of the Deed of Guarantee, monthly interest was paid till March, 2020. Thereafter, it has been days of default in payment of interest. Towards the repayment of the principal, from 31.05.2023 to 07.06.2024, several cheques have been issued by one of the partners of the firm and according to the 1st respondent, they were all dishonoured.
- e) It is in the backdrop of these events, the 1st respondent issued a notice on 20.07.2024 to the partners of the firm in the capacity as partners and also as guarantors. The petition was contested by the corporate debtor and on adjudication, the tribunal below found merit in admitting the same to CIRP.
- 2) Appearing for the appellant, Mr. V. Raghavachari, senior counsel, concluded:-
- a) A partnership firm does not have a distinct legal character, and it is only a compendious term to refer to the partners thereof. A partner therefore can

never be a guarantor for himself. Therefore, initiation of a proceeding under Section 7 of IBC itself is flawed.

b) Clause 3 of the Deed of Guarantee reads :- "*The borrower has agreed to repay the loan in installments / lumpsum on or before or within such date as may be agreed upon by the lenders and borrower*". However, the time for repayment which is required to be fixed in terms of this clause has never been so fixed. In para-4 of the demand notice dated 20.07.2024, the 1st respondent states that, it has been orally fixed, but inasmuch as the deed of guarantee is but a contract between the parties, and inasmuch as it has been reduced to writing, then in terms of Section 95 BSA (corresponding to Section 92 of the Evidence Act), parol evidence altering the terms of the contract cannot be permitted. In short, the obligation to make the payment has not even arisen.

c) According to the respondent, the default has occurred in March 2020, when the principal borrower cease to pay monthly interest on the amount borrowed. This falls squarely within Section 10A of the Code and in terms of proviso to Section 10A, where default has occurred during the said period, no CIRP under Section 7 can be commenced.

3) Summing up, the learned counsels submitted that, the very institution of CIRP cannot be accommodated in law.

4) Making his preliminary submissions in response to the above submissions of the appellant, Mr. TK. Bhaskar, the learned counsel appearing for the 1st respondent made the following submissions:

- a) A partnership creates joint and several liability among the partners and if one of the partner is a company, then necessarily, it exposes itself to the peril of an initiation of a proceeding under Section 7 in the eventuality of the firm of which it is a partner, defaults in paying its dues.
- b) So far as, the alleged need to enter into a contract vis-à-vis the performance of the contractual obligation by the firm goes, one of the partners have issued several cheques between 2023 – 2024 and each one of them was dishonoured. Hence, the appellant issued a notice of recalling the loan and on 20.07.2024 the loan was recalled. Both the issuance of the cheques dishonour and their notice to recall the debt have taken place beyond the time covered by Section 10A.
- c) Thirdly, inasmuch as one of the partners have issued the cheques to discharge the outstanding liability, it constitutes an acknowledgment and that will bind the other partners including the corporate debtor as well. This will also address an objection raised in terms of proviso to Section 10A IBC.

5) Therefore, irrespective of whether the corporate debtor is treated as a partner or as a guarantor, it may still be liable for the default of the firm under Section 7 IBC.

6) Order in stay application IA No. 1473/2026 is reserved.

[Justice N. Seshasayee]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

YS/PC/MS