

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.247/2025
(IA No.697, 698, 699 & 700/2025)

In the matter of:

Paturu Murali Krishna

Suspended Director of GVK Energy Ltd.

...Appellant

V

IDBI Bank Ltd. & Anr.

...Respondents

Present :

For Appellant : Mr. PH Arvinth Pandian, Senior Advocate &
Mr. Krish Kalra, Advocate

For Mr. Siddharth Govind, Advocate

For Respondents : Mr. E. Om Prakash, Senior Advocate

For Mr. P Elayarajkumar, Advocate for R1

Mr. Y. Suryanarayana, Advocate for R2

ORDER

(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma (Member Judicial):

IA No. 699/2025 & IA No. 700/2025:

The instant Company Appeal, has been preferred by the Appellant by invoking the provisions contained under Section 61 of I & B Code, 2016, being aggrieved by the Impugned Order of 06.05.2025, which was passed by the Learned NCLT, Hyderabad Bench-II in CP(IB) No. 104/7/HDB/2023. The consequential effect of the Impugned order is that the Interlocutory Applications being, IA No. 1988/2023 and IA No. 192/2025, have been dismissed and as a result thereto, the application preferred under Section 7, by the Respondent IDBI Bank, has been admitted and commencement of CIRP proceedings, against GVK Energy Ltd. (the Corporate Guarantor) has been ordered, directing it to be concluded in

accordance with the provisions of the Code, within the time frame as reckoned in the order passed by the Tribunal.

While putting a challenge to the Impugned order and the directions as given therein, the Learned Counsel for the Appellant has submitted that the proceedings initiated at the behest of the IDBI Bank, would not be maintainable owing to the certain stipulations which were contained in the Third Amendment and Restated Security Trustee Agreement and the guarantee agreement both dated 21.07.2017 have not been adhered to particular, in reference has been made by him to Clause 1.2 of the said guarantee agreement contending that IDBI Trusteeship issued demand notice on behalf of all secured parties, but the unilateral decision of IDBI Bank (Respondent No. 1) to initiate Section 7 proceedings against the GVK Energy, the Corporate Guarantor (CG) without taking the Security Trustees into confidence as contemplated under Clause 2.7.1, of the said Security Trustee Agreement, would vitiate the proceedings.

He has further contended that the demand notice issued on 08.02.2019, was not a valid demand notice based on which the proceedings, could have been initiated under Section 7 of I & B, Code by Respondent No. 1, because it has been issued by IDBI Trusteeship Pvt. Ltd. and not by Respondent No. 1 or, under its written instructions as per Clause 2.7.1 of the Security Trustee Agreement. He has also touched upon the question of the limitation with regards to the action being proceeded on basis of the notice of demand dated 08.02.2019, though during the

course of the argument, he did not press much on the question of limitation while pressing for the interim order prayed for. Primarily, he contended that the IDBI Bank on its own could not have initiated the proceedings under Section 7 of I & B Code, against the Corporate Guarantor owing to, that the terms of Security Trustee agreement and guarantee agreement dated 21.07.2017, which, as per hi, stipulate that it should be a concerted proceedings to be drawn by the Financial Creditor/Secured Parties along with the Security Trustees.

He has made reference to a judgement reported in **2022 SCC OnLine NCLAT 4524**, in the matters of **Rakshit Dhirajlal Doshi Vs. IDBI Bank Ltd. & Ors.** where it was held that any demand raised contrary to the terms and conditions of financing documents agreements does not constitute a valid demand and no proceeding under Section 7 is maintainable and contended that the issue involved therein was almost similar to the instant case. But if the judgement of Rakshit Dhirajlal (Supra) is read in its entirety and particularly the contents of the Para 24 of the said judgement along with Para-29 and the factual backdrop thereof, under which, the said proceedings drawn by the IDBI was held to be not maintainable, it can be seen that it was altogether different, being based upon an altogether different contextual issue and the same would not be applicable in the instant case, country to the arguments extended by the Learned Counsel for the Appellant at the stage of pressing the interim relief application.

So far as the argument extended by the Learned Counsel for the Appellant in relation to Clause 6.7, of the Security Trust Agreement is concerned, that the IDBI Bank could not have acted in an individual capacity by drawing the proceedings under Section 7 of I & B, Code, it fails to impress us because, the said clause does not appear to create an absolute restriction as if no proceedings could have been drawn by the IDBI, without taking into confidence of the other financial creditor and the security trustee. Further, on a detailed validity of Clause 6.1, to be read with Clause 4 of the said agreement, on which much emphasis was made by the Learned Counsel for the Appellant, to press home his point that the secured parties have to act collectively along with the Security Trustee. This Appellate Tribunal is of the tentative view that there does not appear to be any absolute restriction for an individual lender to act on his own and initiate the proceedings under Section 7 of I & B Code against the Corporate Guarantor in the absence of the security Trustees, acting along with other financial creditors. Thus the contention extended by the Learned Counsel for the Appellant may not be acceptable for the purposes of grant of Interim Order.

Hence, no ground is made out in the light of the covenants contained under the Security Trustee agreement and the guarantee agreement of 21.07.2017, which do not appear to create an absolute restriction on the financial creditor i.e., IDBI Bank individually could not have issued a notice of demand dated 08.02.2019, as

the Security Trustee Agreement itself contemplated certain exceptions under which the proceedings could be drawn.

In fact, the observation which, has been made in the Impugned Order, by Learned Adjudicating Authority is that the entire exercise of the Appellant was to impeach upon the proceedings under Section 7 of I & B Code and not permit it to be proceeded against the Corporate Guarantor, the Appellant herein.

Apart from the reasons which have been given in the Impugned Order of 06.05.2025, in view of the conditions contained in the Security Trustee Agreement and guarantee agreement dated 21.07.2017, this Appellate Tribunal is not inclined to grant any interim protection at this stage, more particularly as it has been argued by the Learned Counsel for the Respondent that the plan has already been approved as against the Corporate Debtor. Hence, the Stay Applications being IA No. 699/2025 and IA No. 700/2025, are hereby rejected.

The Respondents may file the Counter Affidavit to the Company Appeal within a period of two weeks from today. List this Company Appeal as soon as the Counter Affidavit is filed by the Respondents. Put up this matter on **06.08.2025**.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

07.07.2025
RO/MS/RS