

The approval of a resolution in respect of one borrower cannot certainly discharge a co-borrower.

CASE TITLE	Maitreya Doshi Vs Anand Rathi Global Finance Ltd. And Anr. ¹
CASE CITATION	Civil Appeal No. 6613 of 2021
SECTIONS/REGULATION	Section 7, 5(8) IBC, Contract Act
DATE OF ORDER	22.09.2022
COURT/ TRIBUNAL	Supreme Court
CASE LAW REFERRED	Anuj Jain, <i>IRP for Jaypee Infratech Limited v. Axis Bank Limited and Ors.</i> Lalit Kumar Jain v. Union of India

Brief of the case:

The Appellant is a suspended Director of Doshi Holdings (CD). An NBFC (FC) disbursed loan to the tune of Rs.6 Crores to M/s Premier Limited, under three separate Loan-cum-Pledge Agreements. According to the Appellant, Doshi Holdings pledged shares held by it in Premier, in favour of the Financial Creditor, by way of security for the loan. FC filed a petition under Section 7 of the IBC for initiation of CIRP against Premier and CD. Appellants pointed out that the interpretation clause in the agreement stated that Premier and Doshi Holdings were collectively referred to as the borrowers and individually as a borrower or pledger. Appellant submitted that the expressions borrower and pledger had to be read in the context of the obligation of the parties under the Loan-cum-Pledge Agreement.

Decision:

Hon'ble Supreme Court dismissed the appeal held that,

"36. The proposition of law which emerges from the judgment is that a pledgor per se may not be a Financial Debtor. However, in this case, as observed above, the Appellate Authority arrived at a factual finding that Disha Holdings was a borrower. In Lalit Kumar Jain v. Union of India, this Court held that the approval of a resolution plan in relation to a Corporate Debtor does not discharge the guarantor of the Corporate Debtor. On a parity of reasoning, the approval of a resolution in respect of one borrower cannot certainly discharge a co-borrower.

37. If there are two borrowers or if two corporate bodies fall within the ambit of corporate debtors, there is no reason why proceedings under Section 7 of the IBC cannot be initiated against both the Corporate Debtors. Needless to mention, the same amount cannot be realised from both the Corporate Debtors. If the dues are realised in part from one Corporate Debtor, the balance may be realised from the other Corporate Debtor being the co-borrower. However, once the claim of the Financial Creditor is discharged, there can be no question of recovery of the claim twice over."



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¹ https://main.sci.gov.in/supremecourt/2021/24777/24777_2021_5_1505_38576_Judgement_22-Sep-2022.pdf