

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 61 of 2018

IN THE MATTER OF:

Andhra Bank

...Appellant

Versus

F.M. Hammerle Textile Ltd.

...Respondent

Present:

For Appellant : Mr. N. P. Gaur, Advocate

For Respondent : Mr. Rishi Sehgal, Advocate for RP

**Ms. Suhani Dhingra and Mr. Ankur Mittal, Advocates
for CoC**

O R D E R

04.05.2018 The appellant and the respondents are directed to file an affidavit to inform the Appellate Tribunal on which date the Adjudicating Authority forwarded the impugned order to the appellant for the purpose of counting the period of limitation.

Prima facie, we are of the view that appellant (Andhra Bank) having been given guarantee by the Corporate Debtor (Guarantor) and the appellant come within the meaning of 'Financial Creditor' in terms of Section 5(7) read with Section 5(8) of the Insolvency and Bankruptcy Code, 2016 (for short, I & B Code'). In such case, can claim be made by the 'Financial Creditor' for the purpose of taking part in the 'Committee of Creditors'? The invocation of guarantee has no role to play to determining with the 'Financial Creditor'. *Prima facie*, we are of

the view that the minutes of the Committee of Creditors dated 27th February, 2018 (Enclosure 1 to the application filed on behalf of the 'Committee of Creditors') is not correct and legal as there is no provision for any 'Corporate Guarantor' in the I & B Code nor the Committee of Creditors can be decided on the basis who has got higher amount than the other outstanding dues, though the same can be taken into consideration for the purpose of determining the voting right.

To decide the aforesaid issues, we intend to hear the learned counsel for the parties.

Parties may file additional affidavit within 10 days.

Post the case for 'admission' on 21st May, 2018.

Until further orders, the Adjudicating Authority will not pass any order under Section 31 of the I & B Code.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

/ns/uk