

LEGAL UPDATES

NCLAT: FAILURE TO REFLECT CORPORATE GUARANTEE IN THE DEBTORS' BOOKS DOES NOT RENDER THE CREDITORS CLAIM INVALID

The Hon'ble NCLAT, Chennai Bench overturned the NCLT's decision that denied the appellant's claim based on a corporate guarantee which stated that the corporate debtor had provided for money borrowed by a subsidiary (the Borrower) in question.

Upon concluding that the Corporate Guarantee's existence is undisputed in reality or in law, the Tribunal found that the claim cannot be rejected on the basis that the Guarantee is not shown in the Corporate Debtor's books.

The Hon'ble Tribunal observed that:-

- (i) the Appellant provided all information to the IRP/RP prior to the claim's rejection,
- (ii) following the claim's rejection, the Appellant addressed a thorough response to the IRP's objections, but the IRP did not take into account the documents produced before it and instead rejected the claim without going into detail, and
- (iii) even the Adjudicating Authority merely affirmed the position taken by the IRP/RP without verifying the documents.

The Appellate Tribunal determined that *“Corporate Guarantee having been executed cannot be denied and cannot unanimously decide by the 1st Respondent to the contrary and cannot be adjudicated upon.”*

It also referred to the Hon'ble NCLAT New Delhi's observation in the Export-Import Bank of India, the Appellate Tribunal rejected the argument that failing to invoke corporate guarantee and keeping debt from crystallising renders the claim inadmissible.

Concluding its judgment, the Tribunal permitted the appeal and instructed the RP to review and acknowledge the Appellant's claim after ruling that the Corporate Guarantee was made

accessible to the IRP and NCLT and that the IRP and NCLT cannot argue that the
aforementioned Guarantee was not presented before them.