

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 2382 of 2024
&
I.A. No. 8961 of 2024

IN THE MATTER OF:

Nagpur Nagrik Sahakari Bank Ltd.

...Appellant

Versus

Mohanlal Ayyapan Pillai & Ors.

...Respondents

Present:

For Appellant : Mr. Sandeep Bajaj, Ms. Aakanksha Nehra and Ms. Arushi Vig, Advocates

For Respondent : Mr. Kaushal Ameta, Advocate for IRP.

With
Company Appeal (AT) (Insolvency) No. 448 of 2025
&
I.A. No. 1662, 1706 of 2025

IN THE MATTER OF:

Vyankatesh Engineers & Contractors

...Appellant

Versus

Mohanlal Ayyapan Pillai & Ors.

...Respondents

Present:

For Appellant : Mr. Sunil Fernandes, Sr. Advocate with Mr. Naman Tandon, Advocate

For Respondent : Mr. Kaushal Ameta, Advocate for IRP.

O R D E R
(Hybrid Mode)

05.05.2025 **I.A. No. 8961 of 2024** This is an application praying for
condonation of 14 days delay in filing the Appeal.

2. Learned Counsel for the Appellant submits that the notice was issued in delay condonation application, but no reply has been filed. We find sufficient cause has been shown in the delay condonation application. Delay is condoned.

3. I.A. No. 1706 of 2024 This is an application praying for condonation of 14 days' delay in filing the Appeal. Notices were issued, but no reply has been filed. We find sufficient cause has been shown in the delay condonation application. Delay is condoned.

4. We have heard Mr. Sandeep Bajaj and Counsel for the Appellant appearing in Company Appeal (AT) (Insolvency) No. 2382 of 2024. Mr. Sunil Fernandes appearing for the Appellant in Company Appeal (AT) (Insolvency) No. 448 of 2025. No one has appeared for Respondent No.1, although notices sent to Respondent No. 1 has been delivered. We have also heard Learned Counsel for IRP.

5. Company Appeal (AT) (Insolvency) No. 2382 of 2024 has been filed challenging the order dated 24.10.2024 passed in I.A. No. 1047/2020. The Application filed by Suspended Director was allowed and sale conducted by Respondent No.2 was held in violation of Section 14(1)(c) of the IBC. The Appellant - Nagpur Nagrik Sahakari Bank Ltd., the Financial Creditor of the Corporate Debtor aggrieved by the order has come of this Appal.

6. Company Appeal (AT) (Insolvency) No. 448 of 2025 has been filed against the same order dated 24.10.2024 passed in I.A. No. 1047/2020. The Appellant has submitted its bid in the auction sale proceeding conducted by Nagpur Nagrik Sahakari Bank Ltd. under SARFAESI Act, 2002, the auction was held on 02.12.2019. The Sale was also confirmed by the bank on 02.12.2019 declaring the Appellant - Vyankatesh Engineers & Contractors Private Limited as successful bidder. The Respondent No.1 had challenged the order of auction sale before the DRT, but was unable to obtain an interim order. Respondent No.1 thereafter, filed the application bearing I.A. No. 1047/2020 before the Adjudicating Authority challenging the auction. The Adjudicating Authority vide impugned order has declared the sale held in violation of Section 14(1)(c) of the IBC and had set aside the sale. In para 5 & 6 Adjudicating Authority has held as under:

“....

5. *We are supported by the judgment of "Indian Overseas Bank Vs. RCM Infrastructure Ltd" decided by Hon'ble Apex Court vide order dated 18.05.2022. Relevant para is quoted as under:-*

"In view of the provisions of Section 14(1)(c) of the IBC, which have overriding effect over any other law, any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the SARFAESI Act is prohibited. We are of the view that the appellant Bank could not have continued the proceedings under the SARFAESI Act once the CIRP was initiated and the moratorium was ordered."

6. *Considering the facts of the present case and in view of the judgment passed by Hon'ble Supreme Court, we are of the view that the sale conducted by Respondent no. 2 was in violation of Section 14(1)(c) of the IBC, hence, is hereby set aside. Respondent No. 2 is liberty to file claim with the R.P. and R.P. is directed to consider/entertain the claim as per the applicable rules.*

7. The CIRP against the Corporate Debtor - Virgo Marine Shipyards Private Limited commenced on Application filed under Section 10 by order dated 21.01.2020.

8. Learned Counsel for the Appellant submits that the issue raised in this appeal is covered by recent judgment of this Tribunal delivered in ***Company Appeal (AT) (Insolvency) No. 1049 of 2024 - Pratibha Industries Limited Vs. Yes Bank Limited.***

9. Learned Counsel has relied on paragraphs 32 to 37 of the judgment, which lays down the following:

“....

32. The issue in this regard is as to whether the relationship in respect of first property between the CD and the R1 came to end on the day when the notice for e-auction was issued in terms of amended provision of Section 13(8) of the Act. In this regard, it may be mentioned that a specific question was formulated by the Hon'ble Supreme Court in the case of Celir LLP (Supra) which read thus:- “what is the impact of the amended section 13(8) of the Act on the borrower's right of redemption in an auction conducted under the

Act? Or in other words, what is the effect of amendment to Section 13(8) of the Act r/w Section 60 of the 1882 Act?”

33. In this regard, the Hon’ble Supreme Court has held that “in view of the aforesaid discussion, we hold that as per the amended section 13(8) of the Act, once the borrower fails to tender the entire amount of dues with all costs and charges to the secured creditor before the publication of auction notice, his right of redemption of mortgage shall stand extinguished / waived on the date of publication of the auction notice in the newspaper in accordance with Rule 8 of the 2002 Rules.”

34. In the presence of direct decision of the Hon’ble Supreme Court interpreting Section 13(8) of the Act, the decision relied upon by the Appellant in the case of Indian Overseas Bank (Supra) which has only interpreted Section 14(1) of the Code does not apply because Section 13(8) was not brought to the notice of the Hon’ble Court.

35. The Hon’ble Supreme Court has also discussed sanctity of public auction from paras 88 to 93 in its decision in the case of Celir LLP (Supra). The relevant portion of the said order are reproduced as under:-

“91. Thus what is discernible from above is that it is the duty of the courts to zealously protect the sanctity of any auction conducted. The courts ought to be loath in interfering with auctions, otherwise it would frustrate the very object and purpose behind auctions and deter public confidence and participation in the same.

92. Any other interpretation of the amended section 13(8) will lead to a situation where multiple redemption offers would be encouraged by a mischievous borrower, the members of the public would be dissuaded and discouraged from participating in the

auction process and the overall sanctity of the auction process would be frustrated thereby defeating the very purpose of the Act. Thus, it is in the larger public interest to maintain the sanctity of the auction process under the Act.”

36. In respect of the second property, the first public notice was issued on 03.01.2019. By that time the Appellant did not move to redeem the property by making the payment of the Bank. However, the first sale could not take place, therefore, the public notice was again published scheduling the sale of the properties on 28.01.2019. In that sale, the Bank itself purchased the property which is permitted under Section 13(5A) & 13(5B) of the Act and adjusted the amount which it had to recover from the CD.

37. The jural relationship between the parties in respect of second property also came to an end on 03.01.2019 or 28.01.2019 which was much earlier than the date of commencement of CIRP on 01.02.2019. In this case, even the letter of confirmation was issued on 28.01.2019 and sale certificate was issued on 30.01.2019 much before the date of commencement of the CIRP on 01.02.2019. The Hon’ble Supreme Court has held in the case of Celir LLP (Supra) while interpreting Section 13(8) that the relationship between the parties i.e. mortgager and mortgagee, for the purpose of redemption exists till the date of issuance of notice of sale, if the property is being sold under Section 13(8) of the Act then in that situation also the Appellant has no right to the property for the purpose of raising the dispute.

10. In the present case, Nagpur Nagrik Sahakari Bank Ltd. issued various public notice for auction and in pursuance of the auction notice issued on 17.11.2019 the successful bidder has submitted its bid on 02.12.2019. Successful bidder after receipt of sale confirmation made the payment on 17.12.2019. The submission which was relied by the Adjudicating Authority

Company Appeal (AT) (Insolvency) No. 2382 of 2024 and 448 of 2025 **6 of 7**

of the Suspended Director for allowing the application was that sale was not completed till 03.02.2020, and since CIRP was admitted on 21.01.2020 the sale is in violation of Section 14(1)(c) of the Code.

11. This Tribunal in its judgment Pratibha Industries Limited (supra) has considered the effect of an amendment of Section 13(8) of the SARFAESI Act, 2002, and this Tribunal in the above case had held that relationship between the parties i.e. mortgager and mortgagee for the purposes of redemption exist till date of issuance of notice of sale and in the present case notices for auction under Section 13(8) were issued much prior to commencement of the CIRP. The order impugned passed by Adjudicating Authority allowing the I.A. of the Suspended Director cannot be sustained in view of the law laid down by this Tribunal in Pratibha Industries Limited (supra). Following the judgment of this Tribunal in Pratibha Industries Limited the order impugned dated 24.10.2024 passed in I.A. No. 1047/2020 cannot be sustained. Both the appeals are allowed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

pks/nn