

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No. 498 of 2022**

In the matter of:

Prafulla Purushottamrao Gadge

....Appellant

Vs.

Narayan Mangal & Anr.

...Respondents

For Appellant:

**Mr. Dhruv Gupta, Mr. Dhananjay Dhondarkar,
Advocates.**

For Respondents:

**Mr. Pulkit Tare, Mr. Jatin Sehgal, Advocates for
R1.
PCS Lovkesh Batra, IRP/R2
Mr. Navin Kahndelwal, IRP**

ORDER

(Through Virtual Mode)

06.05.2022: Heard Learned Counsel for the Appellant and Learned Counsel appearing for the Respondent No.1 as well as the Interim Resolution Professional. With the consent of the parties, we dispose of the Appeal at the stage of admission.

2. This Appeal has been filed against the order dated 04.04.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-V, by which the Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code" for short) has been admitted. Few background facts need to be noted for deciding this Appeal are:-

2.1. Earlier an Application under Section 7 was filed by the Respondent No.1 on 12.10.2019 claiming a sum of Rs. 63,20,388/- which Application stood

withdrawn by order dated 13.12.2019. On the Consent Terms, the order withdrawing the Application records as follows:-

“Both sides present and submits that the matter is amicably settled between the parties and filed consent terms. Consent terms taken on record.

Accordingly, on the request made by the Petitioner for withdrawal of this Petition, the Petition is disposed of as withdrawn.”

2.2. The Respondent No.1 filed again an Application under Section 7 alleging that there was default in the Consent Terms and on the basis of default committed by the Corporate Debtor fresh claim is to be considered. The said Application was filed on 25.06.2021 being CP (IB) No. 725 (MB) 2021. In the fresh Application filed under Section 7 by the Respondent No.1, the amount claimed under Part-IV is Rs. 78,65,000/-. The notice was issued in the said Application and after hearing the parties, the Adjudicating Authority by the impugned order has admitted the Application. The Suspended Director of the Corporate Debtor has come up in this Appeal challenging the order.

3. The principal submission which has been raised by the Counsel for the Appellant is that in view of the Notification dated 24.03.2020 by which threshold of Rupees One Crore has been provided and minimum amount of default for the purpose of filing an Application under Part-II of the IBC, the Application filed on 25.06.2021 having not fulfilling the threshold ought to have been rejected. It is submitted that the Adjudicating Authority without considering the said threshold has admitted the Application.

4. Learned Counsel for the Respondent No.1 refuting the submissions of the Learned Counsel for the Appellant contends that the present Application filed under Section 7 filed on 25.06.2021 is in continuation of the earlier Application which was filed on 12.10.2019 and hence, the threshold which was introduced on 24.03.2020 shall not be applicable.

5. Learned Counsel for the IRP submits that no payment of fee has been made to the IRP in the proceedings.

6. We have considered the submissions of the Learned Counsel for the parties and perused the record.

7. The submission raised by the Counsel for the Appellant that the Application which has been filed on 25.06.2021 under Section 7 has to fulfill the requirements of threshold as introduced by Notification dated 24.03.2020 has substance. The Adjudicating Authority has not adverted to the said issue and has admitted the Application. The submission of the Counsel for the Respondent that Application dated 25.06.2021 is in continuation of the earlier Application cannot be accepted. After 13.12.2019, I.A 1128/2020 for restoration was filed which was dismissed on 02.02.2021 by the Adjudicating Authority. Thus, the Adjudicating Authority has refused to restore the earlier Section 7 Application which order has become final. Further, Learned Counsel for the Appellant has rightly referred to Clause 12 of the Settlement Agreement which was earlier filed in the earlier proceeding where it was mentioned that in event, any default is committed in the Settlement Agreement, there shall be liberty to initiate fresh legal proceedings under Section 7. We, thus, are of the

view that the Application filed under Section 7 by the Respondent No.1 not having fulfilling the threshold of Rupees One Crore ought not to have been entertained and the Adjudicating Authority committed error in admitting the Application. We, thus, allow the Appeal, set aside the order dated 04.04.2022 impugning this Appeal.

8. Insofar as fees of IRP is concerned, we are of the view that the IRP shall be paid an amount of Rs. 1,00,000/- (One Lac), Rs.50,000/- each by the Appellant and Respondent No.1 within one month from today.

9. We, further, observe that the dismissal of Application filed on 25.06.2021 filed by the Respondent No.1 shall not preclude the Respondent No.1 to take fresh proceeding under Section 7 in event all conditions under Section 7 are fulfilled in accordance with law. We further make it clear that we have not entered into the merits of the contentions of the parties and the Appeal is being allowed only on the ground of not fulfilling the threshold of Application under Section 7.

10. With these observations, the Appeal is allowed.

**[Justice Ashok Bhushan]
Chairperson**

**[Shreasha Merla]
Member (Technical)**

Anjali/nn