NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1930 of 2024
&
I.A. No. 7495 of 2024

[Arising out of Order dated 23.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench), in (IB)-243(PB)/2023]

IN THE MATTER OF:

Nakul Bharana
S/o Sh. Dheeraj Singh Bharana,
R/o C- 146, First Floor,
Sarvodya Enclave,
New Delhi- 110016. **...Appellant**

Versus

1. National Asset Reconstruction Company Limited
8th Floor, Birla Centurion, Unit No.1,
794, Pandurang Bhudhkar Marg,
Worli, Mumbai, Maharashtra – 400030.
Email id: kapil.soni@nacl.co.in **...Respondent No. 1**

2. Bareilly Highways Project Limited
Under Corporate Insolvency Resolution Professional
Through its Interim Resolution Professional,
Mr. Sandeep Goyal,
410, Pratap Bhawan, 5 Bahadur Shah Zafar
New Delhi – 110002.
Email Id: cmasandeepgoel@gmail.com
Registration No.: IBBI/IPA-003/IP-N00073/2017-2018/10583 **...Respondent No. 2**

Present:

For Appellant : **Mr. Krishnendu Dutta, Sr. Advocate with Ms. Prachi Darji, Ms. Divya Verma, Ms. Ritika Gussain and Mr. Manav Goyal, Advocates.**

For Respondents : **Mr. Niranjan Reddy, Sr. Advocate with Ms. Smriti Churiwal, Mr. Vishesh Kalra, Mr. Jaiveer Kant and Ms. Anoushka Deo, Advocates for R-1.**

For Intervenor : Mr. Arijit Prasad, Sr. Advocate with Ms. Nishtha Kaura, Advocates.

O R D E R

ASHOK BHUSHAN, J.

This appeal by a suspended director of the corporate debtor has been filed challenging the order dated 23.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench) admitting a Section 7 application filed by the State Bank of India (SBI) against the Corporate Debtor, Bareilly Highways Project Ltd.

2. Brief facts necessary to be noticed for deciding the appeal are:

i. The corporate debtor was constituted a Special Purpose Vehicle (SPV) for carrying out National Highway Project to construct, operate and maintain the four laning of Bareilly Sitapur Section of National Highway – 24 from kilometre 262 to kilometre 413 in the state of Uttar Pradesh.

ii. State Bank of India by a sanction letter dated 15.11.2010 sanctioned financial facilities to the corporate debtor.

iii. Lenders on 16.12.2010 agreed to extend corporate debtor a loan aggregating to ₹1,350 Crore.

iv. Facility Agreement dated 16.12.2010 was entered which was modified by the SBI subsequently.

v. Loan account of the corporate debtor was classified as Non-Performing Asset (NPA) on 26.07.2017.

vi. Section 7 application were also filed against the Era Engineering Ltd. (Era) the holding company of the corporate debtor.

vii. National Highways Authority of India (NHAI) issued termination notice to the corporate debtor on 03.05.2019.

viii. Corporate debtor submitted a settlement proposal to the lenders in the year 2020, which was not accepted.

ix. SBI filed an application under Section 7 on 15.04.2023 against the corporate debtor for a default of ₹1409.72 Crore.

x. Date of default was mentioned as 18.01.2019. Notice was issued by NCLT to the corporate debtor. A reply was filed before the Adjudicating Authority, the corporate debtor pleaded that it has given One-Time Settlement (OTS) proposal to the consortium of bank, which was rejected by the consortium of banks. A Writ Petition was also filed by the corporate debtor being ***Writ Petition (Civil) No.11150/2024, 'Bareilly Highways Project Ltd.' Vs. 'Reserve Bank of India & Ors.',*** where liberty was granted to the corporate debtor to submit OTS with the lead bank.

xi. Adjudicating Authority after hearing the parties returned a finding that debt and default is proved, Adjudicating Authority directed for admission of Section 7 application by order dated 23.09.2024.

xii. Appellant, the suspended director of the corporate debtor, challenging the order dated 23.09.2024 filed this appeal.

xiii. When the appeal came for consideration, it was submitted by the appellant that appellant has submitted the proposal on 08.10.2024 of ₹550 Crore. Noticing the said submissions, interim order was passed by this Tribunal on 15.10.2024. Order dated 15.10.2024 is as follows:

> ***"1.*** *Counsel for the Appellant submits that after the Interim Order granted by the High Court was vacated, the Appellant has submitted the proposal on 08.10.2024 for Rs. 550 Crores which is much more than Reserve Price of Rs. 300 Crores for which Notice has been issued on 30.09.2024 for assigning the debt.*
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> ***2.*** *Learned Sr. Counsel Mr. P. Nagesh appearing for the Bank seeks time to obtain instructions with regard to proposal on 08.10.2024. A week's time is allowed to Mr. P. Nagesh Counsel appearing for State Bank of India.*
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> *List this Appeal again on* ***25th October, 2024.***
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> *It is submitted that Publication has not yet been made.*
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> *In the meantime, till the next date no further steps shall be taken in pursuance of the Impugned Order dated 23.09.2024."*

xiv. Appeal was taken by this Tribunal from time to time, where appellant prayed for time to bring settlement with the financial creditor on record. In order dated 09.12.2024 following was observed:

> ***"1.*** *Affidavit has been filed on behalf of the appellant on 12.11.2024. Ld. Counsel for the appellant submits that appellant has approached all lenders and meeting has been fixed for settlement. Counsel for the appellant submits that the as per the news published in the 'Business Standard' the National Assets Reconstruction Company emerge as front runner to acquire non-performing loan of Rs.1773 crores of the corporate debtors. It is submitted that appellant is ready to settle with all the banks including NARCL, if it is assigned. Counsel for the State Bank of India submits that no assignment has yet been made by the State Bank of India.*

> ***2.*** *We are of the view that in event any settlement takes place with all banks the route open to the appellant is to file application under Section 12A of IBC. The Counsel for the appellant submits that the appeal be taken in the first week of January to inform the court about the settlement so that appropriate directions be issued for proceeding under Section 12A.*
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> ***3.*** *List this appeal on 13.01.2025.*
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> ***4.*** *We make it clear that this will be the last opportunity for the appellant to inform court about settlement, if any. 5. Interim order to continue."*

xv. There being assignment by the SBI in favour of NARCL, substitution was permitted of NARCL. By order dated 13.01.2025, appeal was heard. Appellant sought further adjournments on 07.03.2025 and as last opportunity interim order was continued till 12.03.2025. On 12.03.2025, learned counsel for both the parties submitted that no settlement has been taken with the financial creditors. Hearing was closed on 12.03.2025.

3. We have heard learned Sr. counsel, Mr. Krishnendu Dutta appearing for the appellant as well as learned Sr. counsel, Mr. Niranjan Reddy appearing for the respondent.

4. Learned counsel appearing for the appellant had submitted that corporate debtor has invoked arbitration against the NHAI. The corporate debtor has been making efforts to clear the dues of the lenders with regard to which various OTS proposal was given from time to time. Corporate debtor has also invoked the Post Termination Arbitration Agreement against the NHAI on 16.08.2021 and appellant shall be able to clear the dues of the lender after receiving the amount as granted in the arbitration proceeding. The resolution plan of the holding company Era has already been approved on 11.06.2024.

5. Learned counsel for the respondent refuting the submission of the counsel for the appellant submits that no arguments have been raised by the appellant with regard to debt and default, which is an admitted fact. It is submitted that the fact that appellant has taken several opportunities from this Tribunal to settle the dues of the financial creditors in which he failed, clearly proves the debt and default on the part of the appellant. In Section 7 proceeding, the Adjudicating Authority has to consider the debt and default and debt and default being proved, no error can be said to have been committed by the Adjudicating Authority in admitting Section 7 application. The appellant has taken various opportunities and has prolonged the hearing of the appeal after obtaining an interim order due to which the Corporate Insolvency Resolution Process (CIRP) against the corporate debtor could not proceed any further. Learned counsel for the respondent has also referred to the judgment of the Hon'ble Supreme Court dated 11.05.2023 in the matter of ***'M. Suresh Kumar Reddy' Vs. 'Canara Bank & Ors.',*** in ***Civil Appeal No.7121/2022,*** in support of his submission that the debt and default being proved, Adjudicating Authority has to admit Section 7 application.

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

7. There is no dispute between the parties regarding financial facilities extended by the SBI. The amount disbursed by the SBI to the corporate debtor. The accounts were declared NPA by the financial creditor on 26.07.2017. Loan recall notice was issued by the SBI on 11.01.2019 and on behalf of the all the consortium lenders demanding a payment of amounts of ₹2078.04 Crore. Section 7 application was filed by the SBI for a default of ₹1049.72 Crore. Before the Adjudicating Authority itself, the corporate debtor pleaded that corporate debtor has submitted one-time proposal before the lenders. During the course of the hearing of Section 7 application, OTS proposal dated 03.08.2024 was given which was rejected by the consortium of bank, which facts have been noticed in paragraph 12 of the judgment of the Tribunal which is to the following effect:

> *"12. During the course of hearing, it was pointed out by the Ld. Counsel for the CD that they had given one time settlement proposal to consortium of banks and they wanted the same to be considered primarily on the plea that the arbitral proceedings against the NHAI may result in their favour and upon the same all the debts of the FC could be extinguished. The first OTS proposal was given on 03.08.2024 that was rejected by the consortium of banks. CD upon rejection of proposal filed a Writ Petition No. WP (Civil) No. 11150/2024 titled as Bareilly Highways Project Ltd. vs RBI & Ors. The Hon'ble High Court of Delhi passed first order on 12.08.2024 & 13.08.2024 more particularly para 12 & 13 which read as under:-*
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> *"12. In view of peculiar facts and circumstances of the matter, the petitioner company is granted liberty to submit another 'OTS' with the lead banker i.e. respondent No. 2/SBI within a week and the matter may be considered thereafter by the Settlement Advisory Committee within two weeks after affording an opportunity of hearing to the petitioner company. This is without prejudice to rights and contention of the parties.*
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> *13. In view of the above, the learned NCLT may proceed as per law after four weeks."*

8. Adjudicating Authority has also noticed the submissions on behalf of the corporate debtor that they have not serious objection to the contention that the debt and default is an accepted fact. Para 16 of the judgment is as follows:

> *"16. Coming on the issue of debt and default, it is fairly stated across the bar by the CD that they have no serious objection to contention that the debt and default is an accepted fact. The argument of Mr. Fernandes, Ld. Sr. Counsel for the CD primarily revolves around the pending arbitration against National Highway Authority of India in a sum of ₹9819.18 Crores before the sole arbitrator and if that amount comes in the favour of CD, the entire debt in this case would be wiped out. Therefore, this Adjudicating Authority should adjudicate the matter in the light of this stand. This contention is based on the judgment of Hon'ble Supreme Court in the case of Vidarbha Industries Power Limited vs Axis Bank Limited (2022) 8 SCC 352. However, the position in Vidarbha has been clarified in M. Suresh Kumar Reddy vs Canara Bank & Ors. Civil Appeal No. 7121 of 2022 primarily on the ground that the decision in Vidarbha was in view of the set of facts in that matter and cannot be taken to be view contrary to what has been laid in Innovative Industries Ld. Vs ICICI Bank Ltd & Anr. (2018) 1 SCC 407. In the case of Vidarbha there was an order in favor of CD from the APTEL."*

9. We have already noticed the proceedings in this appeal. Before this Tribunal the appellant pleaded that they have given OTS proposal to the financial creditors. In order dated 25.10.2024, we have noticed the submissions of the counsel for the SBI that SBI has not accepted the proposal. Even after 25.10.2024, appellant took time to bring settlement on record in which appellant miserably failed. The sequence of the event in the appeal as noted above clearly proves that debt and default is an admitted fact. From the facts brought on the record, it is clear that corporate debtor is unable to clear its debt and it is fit case where insolvency resolution process against the corporate debtor be proceeded.

10. We, thus do not find any error in the order of the Adjudicating Authority admitting Section 7 application. There is no merit in the appeal, appeal deserves to be dismissed. We had passed an interim order on 15.10.2024, we direct that the period from 15.10.2024 till date be excluded from the CIRP process. The RP shall proceed with the CIRP process in accordance with the law.

Subject to above, appeal is dismissed. Pending IAs, if any, are disposed of.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

NEW DELHI

24th March, 2025

himanshu