NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No.1790 of 2024

In the matter of:

Vipin Shersingh Agarwal …Appellant

Vs.

State Bank of India & Anr. …Respondents

Present:

Appellant: Mr. Abhishek Anand, Mr. Karan Kohli and Ms. Vanshika Dhoot, Advocates

Respondent: Mr. Kunal Kanungo, Ms. Tanushree Sogani and Mr. Atishay Jain, Advocates for R-1
Mr. Suraj Chaudhary and Mr. Aakash Shah, Advocates for R-2

O R D E R
(Hybrid Mode)

Per: Justice Rakesh Kumar Jain (ORAL)

22.4.2025 - This Appeal is directed against the Order dated 17th April, 2024 passed by the National Company Law Tribunal (for short, NCLT), Mumbai Bench by which the application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (the Code) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for

Personal Guarantors to Corporate Debtor) Rules, 2019 (for short, the Rules) for initiating insolvency resolution process against the present Appellant for the recovery of sum of Rs.179,06,57,146/- as on 30th November, 2021 has been allowed and Mr. Birendra Kumar Agrawal has been appointed as the Insolvency Resolution Professional (for short, IRP). Brief facts of the case are that Vistar Metal Industries Pvt. Ltd. (Corporate Debtor) had entered into Working Capital Consortium Agreements on 19.01.2013 and 17.12.2014 with consortium of banks being the SBI and Bank of Baroda. The Appellant furnished the guarantee by executing the deed of guarantee dated 17th December, 2014. The three Financial Creditors - Mr. S.P Agarwal, Mr. Rishi Aggarwal and Ms. Kamlesh filed an application under Section 7 of the Code bearing CP(IB)1331/MB/2017 before the NCLT, Mumbai Bench against the Corporate Debtor for the resolution of an amount of Rs.2,01,00,000/- which was admitted on 14th October, 2019, moratorium was imposed and Mr. Atul Jain was appointed as the IRP. After this, the application under Section 95 was filed. The SBI invoked the guarantee vide its Notice dated 16th January, 2017 in respect of Rs.86,20,51,774.59/- together with interest thereon compounding with monthly rests and qua the amount of Bank of Baroda of a sum of Rs.56,61,30,446.94. As per this Notice, the present Appellant was asked to pay the aforesaid amount within a period of 15 days by 31st January, 2017. Thereafter, the State Bank of India also issued Notice under Rule 7 of the Rules on 9th September, 2021 which was also replied by the Appellant on 25th February, 2022. Pursuant thereto, the SBI filed an application under Section 95 on Form 'C' in terms of Rule 7 of the Rules in which the date of default is mentioned as 31st January, 2017 (after expiry of 15 days of legal Notice dated 16th January, 2017). The application filed under Section 95 was ultimately allowed by the Tribunal holding that the limitation is to be counted from the demand Notice dated 9.9.2021 and that Respondent No.1 Bank had duly invoked the guarantee vide Notice dated 16th January, 2017.

2. Aggrieved by the aforesaid two findings of the impugned Order, the present Appeal has been preferred by the guarantor. Counsel for the Appellant has argued that the Notice dated 16th January, 2017 does not carry the address which is provided in the deed of guarantee i.e. Shri Vipin Agarwal, son of Shersingh Agarwal, Indian

inhabitant residing at 201, Arya Aanchal, Near Ahobila Math, Road No.8, Chembur (E), Mumbai - 400071 which is also the address mentioned in the acknowledgement due issued by the Department of Posts. It is, therefore, contended that until and unless the guarantee is invoked which was on demand, the Petition filed under Section 95 was not maintainable. In this regard, he has relied on a decision of this Court in the case of ***"Pooja Ramesh Singh vs. State Bank of India & Anr." In Company Appeal (AT) (Ins) No.329 of 2023*** decided on 28th April, 2023. On the issue of limitation, it is contended that the limitation could not have been counted from the Notice issued under Rule 7 dated 9.9.2021 as the same has to be counted from the date of default which has been mentioned by the Applicant/SBI as 31st January, 2017. It is further submitted since the Application was filed on 2nd March, 2022 therefore, it was clearly barred by time. In this regard he has relied upon a decision of this Court in *"**State Bank of India vs. Mr. Deepak Kumar Singhania" in Company Appeal (AT) (Ins) No.191 of 2025***. In Reply, Counsel for Respondent No.1 has submitted that the Notice dated 16th January, 2017 has been sent on the address of the Appellant at Shri Vipin Shersingh Agarwal, Vaishnav Sadan, Bungalow No.2, Vikas Classique CHS, Behind Bansant Cinema, Chembur, Mumbai – 400074 and the same was received by the Appellant as there is no averment either in the pleadings set up before the Tribunal nor before this Tribunal that the said Notice was never received by the Appellant. In this regard, Counsel for the Bank has also referred to para – 9 of Form 'C' in which there is a reference about the Notice dated 16th January, 2017. The precise language used in this para is as under:-

> *"….through advocate issued notice dated 16.oi.2017 to the Corporate Debtor and its guarantors demanding payment of the dues. However, the Corporate Debtor as well as the guarantors miserably failed and neglected to repay the outstanding dues and did not even respond to the said notice. A copy of the legal notice dated 16.oi.2017 is attached herewith and marked as Exhibit E."*

3. In this regard, Counsel for Respondent No.1 has referred to Reply to Form 'C' in which it is submitted by the Appellant as under:-

> *"It is submitted that the Advocates for the Petitioner, who addressed the Legal Notice dated 16.01.2017*

(Exhibit E to the Petition), have mentioned the Term Loan Facility at Sr.No.1 in the notice (on page no.58 of the Petition)."

4. It is submitted by Respondent No.1 that had this Notice not been received by the Appellant, he should have averred about the non-receipt of the Notice in clear terms whereas there is no such averment made in the Reply to the Application filed under Section 95 that no such Notice was ever received by the Appellant. He has further submitted that on the same address i.e. Shri Vipin Shersingh Agarwal, Vaishnav Sadan, Bungalow No.2, Vikas Classique CHS, Behind Bansant Cinema, Chembur, Mumbai – 400074 on which the Notice dated 16^{th} January, 2017 was sent, the Notice under Rule 7 dated 9.9.2021 was also sent which was received by the Appellant by hand. It is, therefore, submitted that it is a lame excuse raised by the Appellant that Notice dated 16^{th} January, 2017, having been sent on an address which is different from the address provided in the deed of guarantee, was not received by the Appellant.

5. In so far as the issue of limitation is concerned, it is submitted that though the Tribunal has held that limitation has to be counted from Notice dated 9.9.2021 but even if for the sake of arguments, it is not accepted as correct, the application filed under Section 95 is still well within the period of limitation because of Section 18 of Limitation Act, 1963 (for short, the Act). It is submitted that even if the limitation is to be counted from date of default i.e. 31st January, 2017, the period of 3 years has to be counted in terms of Article 137 of the Act as per which the application under Section 95 could have been filed up to 16th January, 2020. However, it is submitted that during this interregnum, the Appellant was pushed into CIRP by Order dated 14th October, 2019, but the balance sheet, in which the long term borrowings and short term borrowings have been shown pertaining to Respondent No.1 were signed before admission under Section 7 by the Corporate Debtor and after the Order of admission dated 14th October, 2019 by the RP who has stepped into the shoes of the Corporate Debtor. Counsel for Respondent No.1 has also submitted that even the balance sheet of the year 2019-2020 has been signed by the Appellant. It is submitted that it has now been well settled by the Hon'ble Supreme Court that the period

of limitation would restart from the date of acknowledgement for a period of three years if the acknowledgement is made during the subsistence of the period of limitation as provided by Section 18 of the Act and a period of three years again becomes available from the date of acknowledgement. Therefore, the application filed under Section 95 is within the limitation period. In rebuttal, Counsel for the Appellant has argued that the Tribunal has not taken into consideration the balance sheets set up by Respondent No.1 and recorded a finding that the limitation would start from 9.9.2021 therefore, impugned Order deserves to be set aside on this ground. In this regard, Counsel for Respondent No.1 has submitted that the Tribunal has taken into consideration the Reply and the Rejoinder as has been mentioned in para – 5 of the impugned Order and the balance sheets are part of the Rejoinder. Therefore, these are on the record of the Tribunal and can be looked into by this Court for the purpose of deciding the issue of limitation.

6. We have heard Counsel for the parties and perused the records. The first issue raised in this case is about the Notice of invoking guarantee deed dated 16th January, 2017 which was

sent on the address – “Shri Vipin Shersingh Agarwal, Vaishnav Sadan, Bungalow No.2, Vikas Classique CHS, Behind Bansant Cinema, Chembur, Mumbai – 400074” which is different from the address provided in the guarantee deed. The argument of the Appellant that it has been clearly provided in the guarantee deed that it has to be sent on the address provided in the guarantee deed and can also be sent to a different address with prior intimation of the Appellant is of no consequence because in the entire pleadings, both before the Tribunal and before this Court, the Appellant has not said a word that the said Notice was never received. Rather the Appellant has taken a technical plea that Notice should have been sent on the address provided in the guarantee deed. In the absence of denial on the part of the Appellant that he did not receive the Notice dated 16th January 2017, having been sent on an address different from the one provided in the deed of guarantee, it has to be presumed that the notice was duly received by the Appellant.

7. Moreover, Respondent No.1 sent the Notice dated 9.9.2021, under Rule 7 of the Rules, addressed to Shri Vipin Shersingh Agarwal, Vaishnav Sadan, Bungalow No.2, Vikas Classique CHS,

Behind Bansant Cinema, Chembur, Mumbai – 400074 which was delivered to the Appellant on the same address by hand. In these circumstances, we are of the view that the Appellant had duly received the Notice of invoking of guarantee deed dated 16th January, 2017 in relation to guarantee deed dated 17th December, 2014.

8. On the second issue of limitation, the default occurred on 31st January, 2017 for which the application under Section 95 could have been filed up to 31st January, 2020. However, in between while the period of limitation was continuing the Corporate Debtor acknowledged the debt in the balance sheets which further enlarged to period of limitation from every date of acknowledgement. In this regard, reference may be had to Clause 12 of the Guarantee Deed which is as under:-

> *"The Guarantors affirm, confirm and declare that any balance confirmation and / or acknowledgement of debt and / or admission of liability given or promise or part payment made by the Borrower or the authorised agent of the Borrower to the said Banks shall be deemed to have been made and / or given*

> *by or on behalf of the Guarantors themselves and shall be binding upon each of them."*

9. In view of the aforesaid Clause in the guarantee deed, that any admission of liability by the borrower shall be deemed to be admission of debt by the guarantor as well, the balance sheets, being part of the record of the Tribunal has to be looked into for the purpose of extension of limitation from the date of acknowledgement. It is needless to mention that as per Section 18, the acknowledgement has to be in writing which of course in this case has been signed by the RP on behalf of the Corporate Debtor as well as the guarantor. No other issue has been raised.

10. In view of the aforesaid circumstances, we do not find any merit in the Appeal. Therefore, the same is dismissed. No cost. All pending I.A.s are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

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