

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No.85 of 2023

IN THE MATTER OF:

Hemant Babulal Prajapati

...Appellant

Versus

Bank of Baroda & Anr.

...Respondents

Present:

For Appellant: Mr. Vishnu Sankar, Mr. Pavan Godiawal and Mr. Joseph D. Tharayil, Advocates.

**For Respondents: Mr. Lovelash Kukreja, Mr. Arun Aggarwal, Advocates for R-1.
Mr. Kinshuk Chatterjee, Advocate.**

ORDER

08.02.2023: Heard learned counsel for the Appellant. This Appeal has been filed against the order passed by the Adjudicating Authority dated 25.11.2022 by which Section 7 application filed by the Bank of Baroda has been admitted. The Appellant before us is a guarantor to the financial benefits extended to the Borrower – ‘Sarthak Creation Pvt. Ltd.’. The proceedings under Section 7 have already been initiated against the Borrower. An application under Section 7 was filed by the Bank of Baroda for initiating proceedings under Section 7 of the I&B Code which was opposed by the Corporate Guarantor on the ground that application is barred by time.

2. The Adjudicating Authority framed specific issue whether the debt is time barred and the Adjudicating Authority after considering the materials on the record returned the finding that on account of three One Time Settlement

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proposals, the application filed by the Bank on 11.09.2020 is within limitation. It is useful to extract observations recorded at page 24 of the order (page 49 of the paper book):

“The chronology of each document executed by the borrower and the corporate guarantor and taking into consideration three one-time settlement proposals submitted (1) by the borrower Sarthak Creation P. Ltd. dated 28.03.2016, (2) by guarantor M/s. Subi Chemicals P. Ltd. dated 11.09.2018 and; (3) by guarantor M/s. Subi Chemicals P. Ltd. dated 27.12.2018 which inter alia acknowledged not only their status as corporate guarantor but also pleading the applicant to allow, concession and accept the proposal for one-time settlement clearly depicts that the corporate guarantor has acknowledged the debt from time to time. Therefore, the application filed by the applicant on 11.09.2020 is within limitation.”

3. Learned counsel for the Appellant challenging the order contends that no default was committed by the Corporate Guarantor and Corporate Guarantor is a solvent company and by initiation of Section 7 proceedings it will also be put to great prejudice.

4. We have considered the submission of learned counsel for the Appellant and perused the record.

5. The Adjudicating Authority having held that the application is within time and default on the part of the Borrower and Guarantor is not even

questioned, we see no error in the order admitting Section 7 application. We, thus, are of the view that no grounds have been made to interfere with the impugned order. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

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