

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1136 of 2024

IN THE MATTER OF:

Harinder Bashista

...Appellant

Versus

Bank of Baroda & Anr.

...Respondents

Present:

**For Appellant: Mr. Vikas Dhawan, Sr. Advocate, Mr. Sambit Nanda,
Ms. Samaya Khanna, Advocates.**

**For Respondents: Mr. Sougat Sinha, Mr. Divyanshu Kumar, Advocates
for Bank of Baroda.
Mr. Bharat Bhushan Sethi, Advocate.**

O R D E R
(Hybrid Mode)

03.06.2024: This appeal has been filed by the suspended Director of M/s Ultimate Infovision Pvt. Ltd. against the impugned order dated 29.05.2024 passed by Ld. National Company Law Tribunal, New Delhi Bench. The Learned Counsel for the appellant says the Bank Guarantee(s) were issued by Bank of Baroda for the company namely M/s Ultimate Infovision Pvt. Ltd. in favour of DTCP, Haryana for the purpose of issuance of license to M/s Jai Krishna Artec J.V. Per para 7 on page no. 103 wherein it is recorded **(a)** it could be invoked only upon an event of default and **(b)** that too on or before 07.07.2017.

2. A letter was issued on 22.05.2017 by the DTCP, Haryana to the Bank of Baroda saying since the bank guarantee is going to expire in the month of July

2017, therefore, it be got extended for a further period of 2 years and 3 months at the earliest and in case the bank guarantee is not renewed before its expiry, this letter may be treated as written confirmation for the purpose of encashment/invocation of the bank guarantee. Admittedly, the bank guarantee was neither extended nor encashed prior to 07.07.2017 even on the basis of letter dated 22.05.2017.

3. Rather an email was written by the borrower to the Bank of Baroda stating *inter alia* the Bank Guarantee should not be extended. However, on 24.11.2017 the DTCP wrote a letter to the Bank of Baroda along with an original bank guarantee for its encashment and thereafter it was encashed.

4. In another petition against the borrower M/s Vardhman Buildtech Pvt. Ltd. the CIRP commenced and the Respondent/Bank of Baroda had filed a claim on 28.03.2019 with the RP where the respondent admitted the Bank Guarantee was invoked on 24.11.2017. However, such claim was not admitted. Thereafter, Bank of Baroda filed a petition under Section 7 against M/s Ultimate Infovision Pvt. Ltd. It was admitted and the CIRP process was initiated against the M/s Ultimate Infovision Pvt. Ltd. also.

5. The submission made by the Learned Counsel for the appellant is the Bank Guarantee was invoked beyond time i.e, after 07.07.2017 and as it was wrongly invoked and that nothing is due from the Corporate Debtor or can be recovered as a financial debt and the petition under Section 7 so filed by the Bank of Baroda/Respondent against Corporate Debtor is bad in law.

6. The Learned Counsel for the Bank of Baroda appears and submits the bank guarantee was encashed on its terms. It is submitted non-extension of

the bank guarantee would itself amounts to default to enable the DTCP to encash the bank guarantee on default. It is further argued it was encashed though vide a letter dated 24.11.2017 but in continuation of the letter dated 22.05.2017, hence, nothing is illegal.

7. The Learned Counsel for the appellant relied upon '*Emco Ltd. Vs. Malvika Steel Ltd. & Ors.*' [2012 SCC Online Del 5763] wherein on exactly similar facts it was held the bank guarantee could not have been invoked.

8. In these circumstances, let the notice be issued to the Respondents through Speed Post as well as e-mail. Requisites along with process fee, if not filed, be filed within three days.

9. Learned Counsel for the respondents appears. May file Replies within four weeks from today. Rejoinder within two weeks thereafter.

10. At this stage, Learned Counsel for the appellant submits to show its bonafide, the appellant shall further deposit an amount of Rs. 2 crores within 10 days from today to the Bank of Baroda and it be converted into FDR and it be deposited with the National Company Law Appellate Tribunal and shall be subject to the outcome of this appeal.

11. Till the next date, the impugned order shall stands stayed.

12. List this appeal on **23.07.2024**.

[Justice Yogesh Khanna]
Member (Judicial)

[Mr. Indevar Pandey]
Member (Technical)

sa/rr