

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Insolvency) No. 1008 of 2023**

In the matter of:

Atul Nathalal Patel

....Appellant

Vs.

Manish Pardasani & Ors.

...Respondents

For Appellant:	Mr. Krishnendu Datta, Senior Advocate with Mr. Abhijeet Sinha, Mr. Samir Malik, Mr. Shahan Ulla, Mr. Varun Kalra, Mr. Rajat Sinha, Advocates.
For Respondents:	Mr. Virender Ganda, Senior Advocate with Mr. Raghav Kakkar, Mr. Ayandeb Mitra, Ms. Aastha Bansal, Advocates for R1-3.

ORDER

02.08.2023: Heard Shri Krishnendu Datta, Learned Senior Counsel for the Appellant and Shri Virender Ganda, Learned Senior Counsel for the Respondents.

2. This Appeal has been filed against the order dated 25.07.2023 by which order the Adjudicating Authority has admitted Section 7 Application filed by the Financial Creditor Respondent Nos.1 to 3. There was an agreement between the Appellant who was Developers with Thakkars on 16.05.2010. Three agreements were executed on the same day in which the Developers were confirming party on the second agreement. Under the agreement, it was decided that the developer will develop the property in joint venture with the Thakkars and Thakkars for raising the investment has agreed with the investors that investors will invest an amount of Rs.6 Crores out of which Rs.3 Crores was advance for development. Agreement further contemplated that in

event the development is not carried out within six months from the date of agreement then a grace period of one month shall be provided to the developers and even if developers fail to enter into agreement, investors shall have option to terminate the instant agreement and developers will return the amount with 18% interest. Developers admittedly has returned the amount of Rs.1.3 Crores and according to the case of the Appellant, amount of Rs.1.7 Crores was refunded in the years 2010 to 2014 to Thakkars and one entity as mentioned in the Appeal. It was submitted that the said amount was to be paid to the investors. The case of the Appellant is that after 2011 there was complete silence and when Appellant- Developer came to know that Thakkars have not paid amount to the investors a police complaint was filed on 04.07.2019 giving all the facts. It is submitted that this Application under Section 7 was filed by the investors, Financial Creditors on 11.08.2022. Reply was filed where apart from other pleas, plea of limitation was taken that Application was barred by time.

3. Adjudicating Authority has proceeded to admit the Application by the impugned order and has repelled the argument pertaining to limitation in paragraph 7.4, which is to the following effect:-

“7.4. On the issue of limitation, this bench finds that date of default is stated as 30.07.2019. Accordingly, the period of three years expires on 29.07.2022. The financial creditor has relied upon the decision in the case of GPR Power Solutions (P) Ltd vs Supriyo Chaudhuri 2021 SCC Online SC 1328 wherein the Hon'ble Supreme Court held that in computing limitation for any application, the period from

22.03.2020 till 14.03.2021 is to be excluded. However, in this case the application was filed between these dates and accordingly the period of 90 days was allowed from after 14.03.2021 to determine the period of limitation. This bench has held in the case of Piramal Capital Housing Finance Limited Vs. Manpreet Developers Private Limited in CP.IB.700/2022 vide order dated 11.01.2023 that the whole period i.e. 15.03.2020 to 28.02.2022 shall be excluded for the purpose of determination of limitation. Following this decision, this bench finds that the petition is in limitation.”

4. Learned Counsel for the Appellant submits that Application was clearly barred by time and Application was filed not for purpose for resolution but for other purposes to harass the developers.

5. Shri Virender Ganda, Learned Senior Counsel appearing for the Respondents submits that the cause of action to file Section 7 Application arose when the police complaint was filed on 04.07.2019 and agreement was terminated. It is submitted that the agreement was terminated on 30.07.2019, hence, application was filed within limitation.

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

7. The agreement was entered between the parties in the year 2010 and Rs.1.3 Crores was paid in the year 2011. It is not disputed that project did not proceed any further and police complaint was filed by the developers when

they came to know that amount of Rs.1.7 Crores which they have paid towards liquidating the entire investment has not been given to the investors- Financial Creditors. The Adjudicating Authority in paragraph 7.4, has *prima facie* misconstrued the judgment of the Hon'ble Supreme Court in *Suo Motu Writ Petition*. Admittedly, Application under Section 7 was filed on 11.08.2022, hence, present was not a case during which period benefit of limitation under *Suo Motu Writ Petition* was allowed by the Hon'ble Supreme Court i.e. till 28.02.2022 with 90 days' grace period in filing the Application. We further find substance in the submission of the Appellant that agreement did not proceed any further in 2010 and as per the agreement itself after 6 months + 1 month, cause of action to the Financial Creditor arose to take appropriate action for recovery of their money. It is submitted that cause of action shall not depend on the investors to exercise their option after 9 years.

8. We *prima facie* find that Application filed under Section 7 ought not to have been admitted and case has been made out to issue notice in the Appeal.

9. Learned Counsel for the Appellant pointed out that IRP while giving his written consent to the Adjudicating Authority for acting as IRP in his letter dated 15.07.2022 has given the facts of the case and certified certain facts in his letter. We find that the said conduct of the IRP is wholly inappropriate. While giving the consent, IRP is not supposed to know the facts or give his own comments.

10. Let notice be issued to CA Ashish Kanodia who is permitted to be impleaded as Respondent No.5 to the Appeal. Shri Virender Ganda, Learned

Senior Counsel appears and has made submission on behalf of Respondent Nos.1 to 3. Let amended memo be filed within three days.

11. Let 'Notice' be issued to Respondent No.4 through 'Speed Post'. Let the requisites together with process fee be filed within three days from today. The Appellant is required to provide the e-mail address of the Respondent No.4 and in that mode also, the service can be effected. The Appellant is also required to furnish the Mobile No. of the Respondent No.4 to the 'Office of the Registry'.

12. Let Reply be filed within three weeks. Rejoinder, if any, may be filed within two weeks thereafter.

13. In the facts of the present case, we also put notice to the Respondent Nos.1 to 3 to give a reply as to why they be not proceeded under Section 65 of the IBC Code.

14. List the Appeal on 20.09.2023.

In the meantime, the impugned order passed by the Adjudicating Authority shall remain stayed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Anjali/nn