

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.226
C.P. (IB)/135(AHM)2024

Proceedings under Section 95 IBC

IN THE MATTER OF:

Small Industries Development Bank of India
V/s
Ashok B.Jiwrajka

.....Applicant

.....Respondent

Order delivered on: 01/05/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

PRESENT:

For the Applicant : Mr. Ajay Kumar, Adv.

For the Respondent : Mr. Saurah Soparkar, Sr. Adv. a.w Mr. Sandip Solanki

ORDER

Heard the Ld. Counsel for the applicant and the Ld. Counsel respondent appeared and waive notice. He also filed a detailed objection to the application stating that the applicant (financial creditors) had already assigned the debt after approval of the resolution plan to ARC Trust vide agreement dated 5th March 2020 and hence this application is not maintainable.

From the documents submitted, it is observed that the guarantor had executed a deed of guarantee on 1 February 2013 in favour of the applicant to secure a loan by M/s Alok Industries Limited who underwent CIRP process and is already resolved vide plan approved dated 8 March 2019. The applicant had invoked the Guarantee on 7 April 2016 and further issued a demand notice (Form B) on 26 September 2022 and filed this application on 13 March 2024. The applicant has failed to establish whether it has been filed within the period prescribed under limitation under Sec 238 A of IBC 2016 and from the facts submitted it does not fall under the period of limitation.

Further the facts mentioned by the respondent have not been revealed by the applicant in his application even though he was one of the financial creditors who has executed such document produced by the respondent.

In view of the above, the application filed is observed to be defective and default and has not revealed the whole facts of the matter while filing this application. The application filed is rejected for both reasons for not filed within the period prescribed under limitation (time barred) and has not presented the facts of the matter while filing this application.

-Sd-

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

CHITRA HANKARE
MEMBER (JUDICIAL)