

ITEM NO.22

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s). 38798/2022

(Arising out of impugned final judgment and order dated 31-10-2022 in CAAT(I) No. 848/2022 passed by the National Company Law Appellate Tribunal)

MAGANLAL DAGA HUF & ANR.

Petitioner(s)

VERSUS

JAG MOHAN DAGA & ORS.

Respondent(s)

(IA No.204530/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.204539/2022-STAY APPLICATION and IA No.1501/2023-INTERVENTION/IMPLEADMENT and IA No.204528/2022-PERMISSION TO FILE APPEAL)

WITH

C.A. No. 9243/2022 (XVII)
(FOR ADMISSION and I.R. and IA No.199475/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.199474/2022-STAY APPLICATION and IA No.1509/2023-INTERVENTION/IMPLEADMENT)

Date : 16-01-2023 This petition was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s) Mr. Dr. A.M Singhvi, Sr. Adv.
Mr. Aman Raj Gandhi, AOR
Mr. Parthasarathy Bose, Adv.
Mr. Nidhiram Sharma, Adv.
Ms. Saloni Kumar, Adv.
Mr. Pranay Tuteja, Adv.

Mr. Dhruv Mehta, Sr. Adv.
Mr. Pranaya Goyal, AOR
Mr. Parthasarathy Bose, Adv.
Ms. Saloni Kumar, Adv.

Mr. Pranay Tuteja, Adv.

For Respondent(s) Mr. Anirudh Sanganeria, AOR
Mr. Patitha Paban Biswal, Adv.

Mr. Tushar Mehta, SGI

UPON hearing the counsel the Court made the following
O R D E R

- 1 Application seeking permission to file the Civil Appeal is allowed.
- 2 Applications for impleadment are allowed.
- 3 The National Company Law Appellate Tribunal has relied upon the decision of a two Judge Bench in **Vidarbha Industries Power Limited Vs Axis Bank Limited¹**. The decision in **Vidarbha Industries Power Limited**, which was rendered on 12 July 2022, was since clarified in a review order dated September 22 2022 in **Axis Bank Limited Vs Vidarbha Industries Power Limited²**.
- 4 It has been submitted that the decision in **Vidarbha Industries Power Limited** runs contrary to the settled position in law laid down in **Innoventive Industries Ltd Vs ICICI Bank³** and subsequently followed in several decisions of this Court including **E S Krishnamurthy Vs Bharath Hi-Tech Builders Pvt Ltd⁴**.
- 5 Mr Tushar Mehta, Solicitor General of India submits that the principle which has been enunciated in **Vidarbha Industries Power Limited** is liable to dilute the substratum of the Insolvency and Bankruptcy Code 2016.

- 1 (2022) 8 SCC 352
- 2 (2022 SCC OnLine SC 1339)
- 3 (2018) 1 SCC 407
- 4 (2022) 3 SCC 161

6 Issue notice returnable on 6 February 2023.

7 Mr Anirudh Sanganeria, counsel who is on caveat on behalf of Respondent No 1, waives service.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR