

Once default of payment has been established, an application filed under Section 7 of the IBC must be admitted.

The Supreme Court of India (“**Supreme Court**”) has in *M. Suresh Kumar Reddy v. Canara Bank & Ors*¹ reiterated that upon being satisfied of the occurrence of a default in making payment by a corporate debtor, the National Company Law Tribunal (“**NCLT**”) is mandatorily required to admit applications filed by financial creditors under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) and the NCLT does not have any discretion in such matters. In doing so, the Supreme Court has clarified that its decision in *Vidarbha Industries Power Limited v. Axis Bank Limited*² (“**Vidarbha Industries Judgment**”), which provided a discretion to the NCLT to admit an application under Section 7 of the IBC, was limited to the facts and circumstances of that case.

Brief Facts

Canara Bank (“**Respondent**”), a financial creditor, filed an application under Section 7 of the IBC against M/s. Kranthi Edifice Private Limited (“**Corporate Debtor**”) before the NCLT, Hyderabad for defaults committed by the Corporate Debtor in repaying an overdraft facility and certain bank guarantees. By an order dated June 27, 2022, the NCLT, Hyderabad admitted the application (“**Order of Admission**”). M. Suresh Kumar Reddy (“**Appellant**”), a suspended director of the Corporate Debtor, filed an appeal against the Order of Admission before the National Company Law Appellate Tribunal (“**NCLAT**”), which appeal was dismissed by way of a judgment dated August 5, 2022 (“**Impugned Judgment**”). Aggrieved by the Impugned Judgment, the Appellant filed the present appeal before the Supreme Court.

The Appellant *inter alia* contended that despite repeated attempts to arrive at a one-time settlement with the Respondent, the Respondent failed to accede to the same. The Appellant placed reliance on the Vidarbha Industries Judgment and submitted that even assuming that the existence of the financial debt and default of the Corporate Debtor was established, the NCLT, Hyderabad was not under an obligation to admit the application under Section 7 of the IBC. The Appellant submitted that for good reasons, the NCLT, Hyderabad could have refused to admit the application filed under Section 7 of the IBC by the Respondent.

The Respondent *inter alia* contended that in a review petition filed against the Vidarbha Industries Judgment, the Supreme Court had clarified that the observations regarding the discretion of the NCLT to admit applications under Section 7 of the IBC was in the specific context of that case (“**Vidarbha Review Order**”). The Respondent submitted that the Supreme Court’s judgment of *E.S. Krishnamurthy and others v. Bharath Hi-Tech Builders Private Limited*³ (“**E.S.**”).

¹ Civil Appeal No. 7121 of 2022

² 2022 (8) SCC 352

³ 2022 (3) SCC 161

Krishnamurthy Judgment) still held the field and accordingly, once the NCLT is satisfied that there is a financial debt and a default has occurred, it is bound to admit the application filed under Section 7 of the IBC.

Issue

Whether the NCLT has the discretion to refuse the admission of an application filed under Section 7 of the IBC?

Findings and Analysis:

The Supreme Court dismissed the appeal and *inter alia* observed as follows:

- 1) In *Innoventive Industries Limited v. ICICI Bank and Another*⁴ (“**Innoventive Industries Judgment**”), the Supreme Court had *inter alia* held that once the NCLT is satisfied that a default of a financial debt has occurred, an application under Section 7 of the IBC must be admitted, unless it is incomplete.
- 2) In the E.S. Krishnamurthy Judgment, the Supreme Court affirmed the Innoventive Industries Judgment and *inter alia* held that the NCLT was only empowered to verify whether a default had occurred or not occurred and based on its decision has only 2 (two) options, either to admit or to reject an application filed under Section 7 of the IBC.
- 3) Once the NCLT is satisfied that a default has occurred, there is hardly any discretion left to refuse the admission of an application under Section 7 of the IBC. Even the non-payment of a part of a financial debt which was due and payable, would constitute a default on the part of a corporate debtor. In such a case, an order of admission under Section 7 of the IBC must follow. It is only where the NCLT finds that there is a debt which has not yet become due and payable, that it may reject the application filed under Section 7 of the IBC.
- 4) The Vidarbha Review Order has clarified that the Vidarbha Industries Judgment was passed in the setting of the facts of that case. Hence, the Vidarbha Industries Judgment cannot be read and understood as taking a view contrary to the Innoventive Industries Judgment and E.S. Krishnamurthy Judgment. As such, the view taken in the Innoventive Industries Judgment still holds good.
- 5) In the facts of the present case, it was evident that the Corporate Debtor had committed a default within the meaning of Section 3 (12) of the IBC due to non-payment of amounts due to the Respondent. Even assuming that the NCLT has the power to reject an application under Section 7 of the IBC if there were good reasons to do so, in the present case, no good reason existed on the basis of which, the NCLT could have denied admission of the application under Section 7 of the IBC.

JSA Comment

This judgment settles the issue regarding the discretionary power of the NCLT to admit an application filed under Section 7 of the IBC. Importantly, the scope of the Vidarbha Industries Judgment, which was being used by corporate debtors to avoid admission of applications filed under Section 7 of the IBC, appears to have been finally and authoritatively clarified.

⁴ (2018) 1 SCC 407

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