REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7121 OF 2022

M. Suresh Kumar Reddy **...Appellant**

versus

Canara Bank & Ors. **...Respondents**

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The respondent-Bank filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short, 'the IB Code') before the National Company Law Tribunal, Hyderabad, Telangana. The said application was filed against a Corporate Debtor M/s Kranthi Edifice Pvt. Ltd. The present appellant claims to be a suspended Director of the Corporate Debtor. National Company Law

Tribunal (for short, 'NCLT'), by an Order dated 27th June 2022, admitted the application filed by the respondent-Bank and declared a moratorium for the purposes referred in Section 14 of the IB Code. The appellant claiming to be an aggrieved person preferred an appeal against the said Order before the National Company Law Appellate Tribunal (for short, 'NCLAT'). By the impugned judgment dated 5th August 2022, NCLAT has dismissed the appeal.

2. The first respondent, Canara Bank is the successor of Syndicate Bank, which made application under Section 7 of the IB Code to NCLT. Syndicate Bank was merged into the first respondent-Canara Bank. A letter of sanction dated 2nd April 2016 was issued by Syndicate Bank by which credit facilities were sanctioned to the Corporate Debtor for one-year valid up to 28th February 2017. A Secured Overdraft Facility of Rs. 12 crores was granted by the Syndicate Bank, apart from sanctioning the Bank Guarantee limit of Rs. 110 crores. Thus, the facilities granted by the Syndicate Bank to the Corporate Debtor were fund-based (Overdraft Facility) and non-fund-based (Bank Guarantees).

3. In the application under Section 7 of the IB Code, the Syndicate Bank stated that as on 30th November 2019, the liability of the corporate debtor under the Secured Overdraft Facility was Rs.74,52,87,564.93. The liability of the Corporate Debtor towards outstanding Bank Guarantees was Rs.19,16,20,100.

4. On 21st October 2022, this Court while issuing notice, recorded a statement of the learned senior counsel appearing for the appellant that a proposal for settlement under a One-Time Settlement Scheme has been submitted to the first respondent-Bank and a sum of Rs.6 crores has been deposited with the first respondent-Bank. Eventually, the said proposal was turned down by the first respondent-Bank. Therefore, the present appeal was taken up for hearing.

SUBMISSIONS

5. The learned Senior Counsel appearing for the appellant submitted that repeated efforts were made to have one-time settlement of the dues payable to the first respondent. But the said request was not acceded to. He

relied upon a decision of this Court in the case of ***Vidarbha Industries Power Limited v. Axis Bank Limited***[1]. He submitted that even assuming that the existence of financial debt and default on the part of the Corporate Debtor was established, the NCLT was not under an obligation to admit the application under Section 7. For good reasons, NCLT could have refused to admit the application under Section 7 of the IB Code. He also fairly pointed out the Order dated 22nd September 2022 passed by this Court in a Review Petition seeking a review of the decision in the case of ***Vidarbha Industries***[1].

6. He invited our attention to the correspondence between the Government of Telangana and the Syndicate Bank. There were contracts granted by the Telangana Government to the Corporate Debtor. He invited our attention to a letter dated 5th November 2018 addressed by the Executive Engineer on behalf of the Government of Telangana requesting the Bank to extend the Bank Guarantees furnished by the said Bank on the request of the Corporate Debtor. Similarly, by a letter dated 7th August 2019, the Government of Telangana requested the Syndicate Bank to extend 29 Bank Guarantees mentioned

1 2022 (8) SCC 352

in the said letter. He pointed out that the Corporate Debtor addressed a letter to the Bank on 9th January 2020 by which a request was made to extend the Bank Guarantees. He also invited the attention of the Court to a letter dated 8th January 2020 addressed by the Government of Telangana to the Bank requesting the Bank to extend the seven Bank Guarantees mentioned therein. He submitted that notwithstanding the requests made by the State Government, Syndicate Bank did not extend the Bank Guarantees. Thus, in a sense, the failure of the Bank to extend the Bank Guarantees forced the Corporate Debtor to commit default. He submitted that the Bank is responsible for triggering the default. The learned counsel invited our attention to the interim order dated 24th April 2020 passed by the learned Single Judge of the Telangana High Court by which the first respondent-Bank was restrained from taking coercive steps pursuant to letters of invocation of Bank Guarantees including handing over of Demand Drafts to the State Government. He urged that in the teeth of this order, NCLT ought not to have admitted the application under Section 7.

7. Learned counsel appearing for the first respondent-Bank firstly pointed out that the decision in the case of

Vidarbha Industries[1] is in peculiar facts of that case, as is explained by the same Bench while disposing of the Review Petition. He submitted that the decision of this Court in the case of ***E.S. Krishnamurthy and others v. Bharath Hi-Tecch Builders Private Limited***[2] still holds the field. He, therefore, submitted that once NCLT is satisfied that there is a financial debt and a default has occurred, it is bound to admit an application under Section 7. He submitted that the request made by the Corporate Debtor for extension of the Bank Guarantees was specifically rejected as communicated by the first respondent by a letter dated 18th January 2021 addressed to the Corporate Debtor. He would, therefore, submit that there is no error committed by NCLT in admitting application under Section 7.

OUR VIEW

8. We have given careful consideration to the submissions. This Court in the case of ***Innoventive Industries Limited v. ICICI Bank and Another***[3] has explained the scope of Section 7. Paragraph nos.28 to 30 of the said decision read thus:-

2 (2022) 3 SCC 161
3 (2018) 1 SCC 407

"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to *any* financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within

which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. **The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.** Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

29. The scheme of Section 7 stands in contrast with the scheme under

Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, **in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in**

> **the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."**
>
> (emphasis added)

9. The view taken in the case of ***Innoventive Industries***[3] has been followed by this Court in the case of ***E.S. Krishnamurthy and others***[2]**.** Paragraph nos.32 to 34 of the said decision read thus:

> **32.**In *Innoventive industries* [*Innoventive Industries Ltd.* v. *ICICI Bank*, (2018) 1 SCC 407, paras 28 and 30 : (2018) 1 SCC (Civ) 356], **a two-Judge Bench of this Court has explained the ambit of Section 7 IBC, and held that the adjudicating authority only has to determine whether a "default" has occurred i.e. whether the "debt" (which may still be disputed) was due and remained unpaid. If the adjudicating authority is of the opinion that a "default" has occurred, it has to admit the application unless it is incomplete.** Speaking through Rohinton F. Nariman,

J., the Court has observed: (SCC pp. 438-39, paras 28 & 30)

> "*28*. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to [Ed. : The word between two asterisks has been emphasised in original.] *any* [Ed**.** : The word between two asterisks has been emphasised in original.] financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II,

particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. *It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority*

is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

* * *

30. On the other hand, as we have seen, *in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law*

or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

33. In the present case, the adjudicating authority noted that it had listed the petition for admission on diverse dates and had adjourned it, inter alia, to allow the parties to explore the possibility of a settlement. Evidently, no settlement was arrived at by all the original petitioners who had instituted the proceedings. The adjudicating authority noticed that joint consent terms dated 12-2-2020 had been filed before it. But it is common ground that these consent terms did not cover all the original petitioners who were before the adjudicating authority. The adjudicating authority was apprised of the fact that the claims of 140 investors had been fully settled by the respondent. The respondent also noted that of the claims of the original petitioners who have moved the adjudicating authority, only 13 have been settled while, according to it "40 are in the process of settlement and 39

are pending settlements". Eventually, the adjudicating authority did not entertain the petition on the ground that the procedure under IBC is summary, and it cannot manage or decide upon each and every claim of the individual homebuyers. The adjudicating authority also held that since the process of settlement was progressing "in all seriousness", instead of examining all the individual claims, it would dispose of the petition by *directing* the respondent to settle all the remaining claims "seriously" within a definite time-frame. The petition was accordingly disposed of by directing the respondent to settle the remaining claims no later than within three months, and that if any of the remaining original petitioners were aggrieved by the settlement process, they would be at liberty to approach the adjudicating authority again in accordance with law. The adjudicating authority's decision was also upheld by the appellate authority, who supported its conclusions.

34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. **The adjudicating authority is empowered only to verify whether a default has**

> **occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively.** These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute."
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> (emphasis added)

10. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. Default is defined under sub-section 12 of Section 3 of the IB Code which reads thus:

> "**3. Definitions: -** In this Code, unless the context otherwise requires,-
>
> .. ..
>
> **(12)** "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;**"**

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the

part of a Corporate Debtor. In such a case, an order of admission under Section 7 of the IB Code must follow. If the NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.

11. Reliance is placed on the decision of this Court in the case of ***Vidarbha Industries***[1] and in particular, what is held therein in paragraph nos. 86 to 89 which reads thus:-

> **"86.** Even though Section 7(5)(*a*) IBC may confer discretionary power on the adjudicating authority, such discretionary power cannot be exercised arbitrarily or capriciously. If the facts and circumstances warrant exercise of discretion in a particular manner, discretion would have to be exercised in that manner.
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> **87. Ordinarily, the adjudicating authority (NCLT) would have to exercise its discretion to admit an application under Section 7 IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the corporate debtor in payment of the debt,**

unless there are good reasons not to admit the petition.

88. The adjudicating authority (NCLT) has to consider the grounds made out by the corporate debtor against admission, on its own merits. For example, when admission is opposed on the ground of existence of an award or a decree in favour of the corporate debtor, and the awarded/decretal amount exceeds the amount of the debt, the adjudicating authority would have to exercise its discretion under Section 7(5)(*a*) IBC to keep the admission of the application of the financial creditor in abeyance, unless there is good reason not to do so. The adjudicating authority may, for example, admit the application of the financial creditor, notwithstanding any award or decree, if the award/decretal amount is incapable of realisation. The example is only illustrative.

89. In this case, the adjudicating authority (NCLT) has simply brushed aside the case of the appellant that an amount of Rs 1730 crores was realisable by the appellant in terms of the order passed by APTEL in favour of the appellant, with the cursory observation that disputes if any

> between the appellant and the recipient of electricity or between the appellant and the Electricity Regulatory Commission were inconsequential."
>
> (emphasis added)

12. A Review Petition was filed by the Axis Bank Limited seeking a review of the decision of ***Vidarbha Industries***[1] on the ground that the attention of the Court was not invited to the case of ***E.S. Krishnamurthy***[2]***.*** While disposing of Review Petition by Order dated 22nd September 2022, this Court held thus:

> **"The elucidation in paragraph 90 and other paragraphs were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case.**
>
> To interpret words and provisions of a statute, it may become necessary for the Judges to embark upon lengthy discussions. The words of Judges interpreting statutes are not to be interpreted as statutes."

13. Thus, it was clarified by the order in review that the decision in the case of ***Vidarbha Industries***[1] was in the setting of facts of the case before this Court. Hence, the decision in the case of ***Vidarbha Industries***[1] cannot be read and understood as taking a view which is contrary to the view taken in the cases of ***Innoventive Industries***[3] and ***E.S. Krishnamurthy***[2]***.*** The view taken in the case of ***Innoventive Industries***[3] still holds good.

14. In this case, we must note that the amount payable by the Corporate Debtor also included the amount repayable under fund-based credit facility of secured overdrafts. The facility granted to the Corporate Debtor was not confined to Bank Guarantees.

15. Moreover, a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 dated 29th August 2018 was issued by the first respondent. As the Corporate Debtor did not honour the said notice, the original application for recovery has been filed by the first respondent before the Debt Recovery Tribunal at Hyderabad. Moreover, the Corporate Debtor acknowledged the debt on 5th May 2019 to the extent of Rs.

63,36,61,897.26. Moreover, the Balance Sheet as of 31.03.2019 of the Corporate Debtor reflects the said liability of the Corporate Debtor.

16. It is true that as far as Bank Guarantees are concerned, the Executive Engineer of the Government of Telangana addressed letters to the Bank requesting the Bank to revalidate the Bank Guarantees. On 8th January 2020, the Government addressed a letter to Syndicate Bank to extend the seven Bank Guarantees mentioned therein. The letter mentions that if the action of revalidation or extension of the Bank Guarantees is not taken, the Bank Guarantees be realized and the amount be paid by Demand Drafts to the State Government. Thus, Bank Guarantees were invoked by the State Government. In view of the said letter, on 9th January 2020, the Corporate Debtor addressed a letter to the Syndicate Bank mentioning that the issue relating to the pre-closure of the two contracts granted by the State Government was under the active consideration of the State Government. The letter mentions that if the Bank Guarantees were not extended, the same are likely to be encashed by the Government. Therefore, a request was made by the Corporate Debtor to the Bank to revalidate the Bank Guarantees. However, the first

respondent by a letter dated 18th January 2021, specifically informed the Corporate Debtor that the competent authority has not considered the proposal of the Corporate Debtor for extending Bank Guarantees and Secured Overdraft Facilities. By the same letter, the first respondent called upon the Corporate Debtor to clear the outstanding immediately. Thus, there is no doubt that the Corporate Debtor committed a default within the meaning of Section 3(12) of the IB Code due to non-payment of the amounts due to the Bank.

17. There are a large number of Guarantees issued by the Bank. The interim order of the Telangana High Court does not relate to all Bank Guarantees. Moreover, there is no finding recorded in the interim order that the Corporate Debtor is not liable to pay the dues. The interim order only prevents coercive action against the Corporate Debtor.

18. Even assuming that NCLT has the power to reject the application under Section 7 if there were good reasons to do so, in the facts of the case, the conduct of the appellant is such that no such good reason existed on the basis of which NCLT could have denied admission of the application under Section 7.

19. Hence, we find that there is no merit in the appeal, and the same is, accordingly, dismissed. There will be no order as to costs.

.....J.
(Abhay S. Oka)

.....J.
(Rajesh Bindal)

New Delhi;
May 11, 2023.