



 **Prakhar Galaw***

Legal Decisions Affecting Bankers

Appellant(s) : M Suresh Kumar Reddy

Vs.

Respondent(s) : Canara Bank and others

Court : Supreme Court

Bench Strength : 2

Bench : Abhay S Oka and Rajesh S Bindal, JJ

Citation : 2023 (8) SCC 387

Relevant Provision of Law

Insolvency and Bankruptcy Code, 2016

- a. S. 3(11) – Debt
- b. S. 3 (8) – Corporate Debtor
- c. S. 3 (12) - Default
- d. S. 3 (7) - Financial Creditor
- e. S. 7 – Initiation of Corporate Insolvency Resolution Process by Financial Creditor

Brief Facts of the Case

1. The appellant, who is the suspended Director of corporate debtor M/s. Kranthi Edifice Pvt. which availed credit facilities from respondent bank erstwhile Syndicate Bank amounting to Rs. 74,52,87,564 in secured draft facility and bank guarantee amounting to Rs. 19,16,20,100.
2. The appellant, defaulted in the payment of the debt due to the bank. Following which a demand

notice under section 13 (2) of the SARFAESI Act, 2002 was issued by the bank which was duly acknowledged by the appellant to the extent of Rs. 63,36,61,897.

3. The appellant after receipt of the demand notice made numerous efforts towards one-time settlement with the respondent but the same was not considered by the bank.
4. The respondent proceeded towards invocation of bank guarantee and directed the appellant to handover demand drafts issued in favor of appellant corporate debtor by the State Government of Telangana for a tender awarded by the Government.
5. The respondent bank, also filed an application under section 7 of the Insolvency and Bankruptcy Code (IBC), 2016 which was admitted by the National Company Law Tribunal (NCLT), Hyderabad and declared moratorium against the respondent.
6. The appellant against the said admission and action of respondent bank moved to the High Court (HC) of Telangana which only provided interim protection against coercive steps taken by the respondent bank and made observations “that NCLT ought not have admitted application under IBC”.
7. The appellant against the admission of petition under section 7 of the IBC, moved to the National Company Law Appellate Tribunal (NCLAT). The

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said appeal was dismissed by the NCLAT.

8. The appellant against the said order of the NCLAT had preferred an appeal in the Supreme Court.

Contention of the Appellant and Respondent

- a. The counsel appearing on behalf of the appellant contended that numerous efforts were made by the corporate debtor for settlement of debt but the same was never seriously considered by the bank.
- b. It was further contended by the counsel that the NCLT ought not have admitted the petition of respondent under section 7 of the IBC in the light of judgement of the Supreme Court in **Axis bank vs Vidarbha Industries Power Ltd'**. In which it was held that obligation of the NCLT under section 7 of the IBC when debt and default has been established is discretionary in nature and not mandatory.
- c. It was also contended that the respondent bank did not extended bank guarantee in favor of the appellant even after the directions of the State Government which forced the appellant to cause the default. Also, the respondent had violated interim protection granted by the HC of Telangana in terms of no coercive actions against the corporate debtor.
- d. The counsel appearing on behalf of the respondent bank contended that facts and circumstances in Axis bank vs Vidarbha Industries Power Ltd. was different and the same cannot be treated as binding precedent as has been emphasized in the review of the said judgement. And the law as laid down in **E. S. Krishnamurthy vs Bharath Hi-Tech Builders Pvt. Ltd.**² with regards to section 7 of the IBC still holds good.

Findings and Observations of Supreme Court

The Supreme Court in the instant case analysed section 7 of the IBC, 2016 in the light of three important judgements with regards to initiation of Corporate

Insolvency Resolution Process by financial debtor. Firstly, it analysed the scope of section 7 of the IBC, 2016 in the light of its judgement in **Innoventive Industries Ltd. vs ICICI Bank**,³ in which it was held that under section 7 when the debt has become due to the financial creditor, the financial creditor can file an application under section 7 of the IBC. After which, the NCLT is bound to decide about the default within 14 days. After the default has been established the corporate debtor under section 7(5) can dispute the default or dispute the debt itself. Once the default is established as per section 7(5), the NCLT is bound to admit application and communicate the order as per section 7(7) to the corporate debtor and financial creditor. The ruling of Innoventive industries case has been discussed and upheld in E. S. Krishnamurthy case.

In the case of Vidarbha Industries vs Axis bank, it was held that obligation of NCLT with regards to admission or rejection of application under section 7 is discretionary in nature. Aggrieved by the said judgement, Axis bank had filed a review petition on the ground that the Court had overlooked the precedent set in Innoventive and E. S. Krishnamurthy case and the same was disposed by the Court. And the court emphasized its dictum in para 90 wherein it was observed that “judgements and observations in a judgement are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in setting of the facts of a particular case”.

The court after careful perusal of facts at hand and law laid down in previous cases came to finding that the tribunal had acted outside the scope of section 7(5) of the IBC. As, it afforded the appellant and respondent numerous opportunities of settlement even when the default was established. As per the Code and previous precedents, there could only be two courses after establishment of default that is either admission or rejection of application on technical grounds. It cannot compel the parties to settle the dispute. The

¹2023 (7) SCC 321

²2022 (3) SCC 161

³2018 (1) SCC 407

court also clarified the dictum of Vidarbha Industries regarding the obligation of NCLT under section 7(5). It held that obligation to admit or dismiss the application under section 7 should be discharged in judicious manner and the discretion cannot be exercised arbitrarily or capriciously. It was also observed that

in each case facts and circumstances might differ, but generally the court should not travel beyond the four corners of the Code and apply the Code in letter and spirit.



Bank Quest included in UGC CARE List of Journals

The University Grants Commission (UGC) had established a “Cell for Journals Analysis” at the Centre for Publication Ethics (CPE), Savitribai Phule Pune University (SPPU) to create and maintain the UGC-CARE (UGC – Consortium for Academic and Research Ethics). IIBF’s Quarterly Journal, Bank Quest has been included in UGC CARE list of Journals.

IIBF entered into MoU with FPSB for Certified Financial Planner certification program

FPSB India, the Indian subsidiary of Financial Planning Standards Board Ltd., the global standards-setting body for the financial planning profession and owner of the international “Certified Financial Planner” (CFP) certification program, has entered into a strategic Memorandum of Understanding (MoU) with IIBF. Under this significant partnership, candidates who have successfully attained the CAIIB qualification from IIBF will be exempted from passing the first three modules of CFP Certification and become eligible to enrol in FPSB India’s Integrated Financial Planning module through the Fast Track Pathway. To qualify for this pathway, candidates must also have a valid three-year experience in banking and financial services.

In addition to the above exemption provision, FPSB India will extend special discount on the total course fees, examination fees, and other applicable fees to eligible CAIIB candidates who apply for the Certified Financial Planner (CFP) certification under the Fast Track pathway.