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"Success comes to those who Act "

➤ **Insolvency initiation: SC upholds NCLT's discretionary powers**

The Supreme Court on Thursday rejected Axis Bank's petition seeking reconsideration of its earlier judgment that held that the NCLT while examining the existence of debt and default by a corporate debtor on a financial creditor's plea for initiating corporate insolvency resolution process has the discretion to admit or not admit the plea.

A Bench comprising justices Indira Banerjee and MM Sundresh, which had earlier allowed the review petition to be heard in the open court, after hearing all the parties – Solicitor General Tushar Mehta and Additional Solicitor General Madhvi Divan (for IBBI), senior counsel KV Vishwanathan and Jaideep Gupta – refused to interfere with its earlier judgment. However, it clarified that the NCLT can exercise its discretion only under special circumstances.

While seeking review of the judgment, Mehta and Divan told the SC that there was a need to revisit the verdict as IBC for the last 6 years had worked well.

In the case, Axis Bank vs Vidarbha Industries Power, the apex court had on July 12 held that Section 7(5)(a) of the IBC conferred a discretionary power on the adjudicating authority to admit an application for initiation of CIRP and such power is required to be exercised with caution. It had differed from the long-settled view that the moment the NCLT was satisfied that a default has occurred, the application must be admitted unless it is incomplete.

The July ruling also held that loan defaults will have to be assessed to check if it was due to genuine business reasons or contingencies such as pending litigation.

Until this order, the courts had held that the NCLT can only check for compliance and adherence to the legal framework and not interfere in the commercial aspect of negotiation or resolution.

Source: Financial Express

Read Full news at: <https://www.financialexpress.com/industry/insolvency-initiation-sc-upholds-nclts-discretionary-powers/2687528/>

➤ **Corporate Debtor Willing To Pay Full Amount, Financial Creditor Opposes , NCLAT Upholds Dismissal Of Section 7 Petition**

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson), Justice M. Satyanarayana Murthy (Judicial Member) and Mr. Barun Mitra (Technical Member), while adjudicating an appeal filed in Reliance Commercial Finance Limited v Darode Jog Builder Pvt. Ltd., has upheld the Adjudicating Authority's decision to not admit a petition under Section 7 of IBC, despite there being a debt and default. The Bench accorded the Corporate Debtor an opportunity to pay/settle the full amount of default despite the Financial Creditor's unwillingness to enter settlement.

Reliance Commercial Finance Limited ("Appellant/Financial Creditor") had sanctioned Term-Loans of Rs. 19.5 Crores to Darode Jog Builder Pvt. Ltd. ("Corporate Debtor") on 29.07.2013. In 2017, the Loan Accounts were declared Non-Performing Assets. Thereafter, on 04.11.2019 the Financial Creditor filed a petition under Section 7 of Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor over a default of Rs. 15,79,41,658/-.

In a hearing held on 06.07.2022, the Corporate Debtor acknowledged its liability to pay and made an offer of Rs. 12.75 Crores to be paid within 45 days. The Adjudicating Authority directed the Counsel for the Financial Creditor to obtain appropriate instructions. It was also observed that if the Settlement did not take place, the Petition would automatically be admitted on the next date of hearing.

On the next date of hearing i.e. 11.07.2022, the Corporate Debtor submitted that it is willing to deposit the entire amount of Rs. 15,79,41,658/- within 45 days. However, the Financial Creditor expressed its unwillingness to settle the matter. The Adjudicating Authority obtained the Bank Account details of the Financial Creditor and alongside granted liberty to the latter to file for restoration of petition in case said amount is not deposited within 45 days. Accordingly, the Petition was disposed of.

Aggrieved by the Order dated 11.07.2022, the Financial Creditor filed an appeal before the NCLAT.

Contentions Of Appellant

The Financial Creditor submitted that the Adjudicating Authority committed error in disposing of the Petition, as it was not willing to settle the matter. Therefore, Adjudicating Authority could not have permitted the Corporate Debtor to deposit amount in Financial Creditor's account.

Contentions Of Respondent

The Corporate Debtor argued that Financial Creditor was unwilling to settle as earlier entire amount was not offered and settlement had not taken place despite

several adjournments. It was submitted that the Corporate Debtor has financial capacity to deposit the entire amount.

Decision Of The NCLAT

The Bench placed reliance on the Supreme Court judgment in Vidarbha Industries Power Limited Vs. Axis Bank Limited, Civil Appeal No. 4633 of 2021, wherein it was held that:

"56. Both, the Adjudicating Authority (NCLT) and the Appellate Tribunal (NCLAT) proceeded on the premises that an application must necessarily be entertained under Section 7(5)(a) of the IBC, if a debt existed and the Corporate Debtor was in default of payment of debt. In other words, the Adjudicating Authority (NCLT) found Section 7(5) (a) of the IBC to be mandatory. The Adjudicating Authority (NCLT) was of the view that Section 7(5)(a) did not admit any other interpretation, with which the Appellate Tribunal (NCLAT) agreed."

The Bench observed that as per the judgment, even after debt and default is there, Adjudicating Authority has to apply its mind to assess the feasibility of initiating CIRP. "When the Corporate Debtor has complied to deposit the entire defaulted amount of the Financial Creditor as permitted by the Adjudicating Authority, no purpose and occasion shall survive to still proceed with the Insolvency Resolution of the Corporate Debtor."

The Bench observed that proceedings under Section 7 are for resolution of insolvency. Adjudicating Authority had not erred in ascertaining whether the Corporate Debtor can comply to deposit the entire defaulted amount in Financial Creditor's bank account. It was observed that the Financial Creditor's interest was fully protected, since liberty was already given to revive the petition in case full amount was not received within 45 days.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/nclat-corporate-debtor-financial-creditor-section-7-of-ibc-209963>

