

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1534 of 2024 & I.A. No. 5559, 5560 of 2024
IN THE MATTER OF:

HDFC Bank Ltd.

...Appellant(s)

Versus

Livein Aqua Solutions Pvt. Ltd.

...Respondent(s)

Present:

For Appellant : Mr. Bheem Sain Jain, Prerna M., Adv.

For Respondents : Mr. Prasenjit Keswani, Sr. Adv. with Pallavi Pratap,
Yashvi Aswani, Adv.

O R D E R
(Hybrid Mode)

Per: Justice Rakesh Kumar Jain: (Oral)

27.08.2025: This appeal is filed by the HDFC Bank (Financial Creditor), being aggrieved against the order dated 18.06.2024, passed by the NCLT, Ahmedabad Bench by which CP/IB/97/AHM/2024 filed by the FC against Livein Aqua Solutions Pvt. Ltd. (CD) for the resolution of its financial debt of Rs. 5,85,64,400/-, has been dismissed on the ground that the petition filed under Section 7 in form 1 in terms of Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short 'the Rules,') is defective.

2. The brief facts of this case are that the Appellant filed the application under Section 7 in form 1 in terms of Rule 4 of the Rules on 01.08.2023 supported by an affidavit dated 17.07.2024. The verification of the petition is dated 26.07.2024.

3. After filing of the petition, the registry of the Tribunal raised certain objections indicating defects in filing on 10.10.2023. The said defects were to

be removed by the Appellant within 7 days in terms of Rule 28(2) of the NCLT, Rules, 2016 (in short 'Rules, 2016').

4. The Appellant did not refile the said petition after removing the defects, therefore, the registry of the Tribunal refused to register the application filed under Section 7 in form 1 on 18.10.2023.

5. The Appellant challenged the order dated 18.10.2023 by way of an appeal No. 4 of 2024 provided under Rule 63 of the Rules, 2016 before the Bench. Rule 63 of the Rules, 2016 is reproduced as under:-

“63. Presentation and scrutiny of petitions or applications.- In case of the scrutiny of the petitions or applications as provided in Part III and elsewhere in these rules, if any person is aggrieved of the decision of the Registrar or such other officer officiating as the Registrar of the Benches, an appeal against the order of the Registrar shall be made within fifteen days of the making of such order to the President of the Principal Bench and at other places to any Member of the Bench designated by the President, and whose decision thereon shall be final.”

6. The Tribunal allowed the appeal of the Appellant on 08.02.2024 with the following order:-

“ORDER

This appeal has been filed by the Appellant under Rule 63 of NCLT Rules, 2016 against the order dated 18.10.2023 of Ld. Joint Registrar passed under Rule 28 of the NCLT Rules, 2016.

It is seen that the petition under Section 7 of the IBC, 2016 was filed on 01.08.2023, and objections were raised by the scrutiny of the Registry on 19.10.2023, and the same was conveyed to the appellant. Since no response was received, a further notice was issued on 10.10.2023, giving seven days' more time. However, no compliance was made accordingly on 18.10.2023, the Ld. Joint Registrar issued an order for decline to register the matter. Now the present appeal has been filed on 01.02.2024, for which

there is a delay of 3 months. It is seen that one of the prayers made in this appeal is for condonation of the delay in filing the present appeal.

Heard the counsel for the Appellant and considered the averments set out in the appeal which is supported by affidavit as well as the scrutiny record produced by the Registry. The grounds mentioned in the appeal are sufficient. Hence, the delay in filing the present appeal is condoned. The order dated 18.10.2023 passed by Ld. Joint Registrar of decline to register the CP for want of removal of defects is set aside.

One more opportunity is given to the Appellant to remove the defects within seven days subject to a cost of Rs.30,000/- to be deposited in the Prime Minister National Relief Fund. Let the case file be placed before Ld. Joint Registrar for removal of defects and scrutiny thereof

The Appeal No.04 of 2024 is disposed of accordingly.”

7. The matter did not rest here because the order dated 08.02.2024 came to be challenged by the Respondent by way of an appeal before this Court i.e. CA (AT) (Ins) No. 770 -771 of 2024. The said appeal (s) was dismissed as infructuous vide order dated 15.07.2024. The said order is reproduced as under:-

15.07.2024: Learned counsel for the Appellant submits that this Appeal has become infructuous in view of the subsequent events.

Appeal is dismissed as infructuous.

8. Thereafter, the application filed by the Appellant, already registered vide order dated 08.02.2024 as CP (IB) No. 97 of 2024 was listed before the

Tribunal for orders on 28.02.2024. On that date, the Tribunal passed the following orders:-

“This is an application filed under Section 7 of the Insolvency & Bankruptcy Code 2016. It is stated by the Applicant that advance copy of the Application in terms of Rule 4 of Adjudicating Authority, IBC Rules, 2016 has already been served on the Respondent.

Let notice be issued to the Respondent by the Registry, returnable by next date. The Applicant is directed to collect the notice from the Registry within three days and serve upon the Respondent along with copy of this order through Registered Ad post / Speed-post / Dasti mode as well as on the registered email ID of the Respondent registered with the MCA within seven days. The Respondent may file reply, if any, within seven days from the date of receipt of notice. Rejoinder, if any, be filed with seven days thereafter.

Proof of Service be filed by way of an affidavit before the next date of hearing.

Re-list for further consideration on 19.03.2024.”

9. The case was then proceeded for the completion of the pleadings and in this process an order was passed by the Tribunal on 19.03.2024, granting last opportunity to file the reply within a period of 7 days and the Appellant was allowed time to file rejoinder within a week thereafter. The said order is also reproduced as under:-

“A service report has been filed by the Applicant on 18.03.2024 vide Inward Diary No. 2394 which reflects that notice issued by this Tribunal was served upon the Respondent on 07.03.2024 by registered post as per the tracking report of the postal authority.

Learned counsel appears for the respondent and filed her Vakalatnama today across the Bench, the same is taken on record. No reply has been filed, despite effective notice was served on 07.03.2024 and advance copy was already served.

Learned counsel for the respondent seeks one more opportunity to file reply. Last opportunity is given to file reply, if any, within seven days with advance copy to the opposite counsel. Rejoinder, if any, be filed within a week thereafter.

Re-list on 29.04.2024.”

10. It is submitted by the Appellant that the respondent filed the reply (herein referred to as the first reply) on 01.04.2024 and filed the additional affidavit (herein referred to as the second reply) on 02.04.2024. The Appellant filed the rejoinder to both the replies on 26.04.2024.

11. Since, the Respondent had challenged the order dated 08.02.2024 before this Court, therefore, the application under Section 7 filed before the Tribunal was adjourned on 14.05.2024 to be relisted on 18.06.2024.

12. It is pertinent to mention that the Respondent has already raised objection in the second reply about the maintainability of the application filed under Section 7 of the Code on the ground that the affidavit filed with the application cannot be taken into consideration as it has been sworn on 17.07.2024 whereas the petition was verified on 26.07.2024.. This objection of the Respondent was replied by the Appellant in its rejoinder.

13. The Tribunal by the impugned order dated 18.06.2024, while referring to objection raised by the Respondent in para 3 and the reply to the objection by the Appellant in para 4, held in para 6 that “on the face of it the affidavit in support of the petition was sworn prior to the date of signing of the petition

as affidavit was sworn on 17.07.2024 and petition was verified and signed notarized on 26.07.2024. We considered this petition as defective.”

14. Counsel for the Appellant has argued that the Tribunal has committed an error in dismissing the petition, holding it to be a defective petition, which is contrary to the provision of Section 7(5) proviso. According to which, the Adjudicating Authority is obligated to give a notice to the applicant to rectify the defect in his application within a period of seven days . Section 7(5) is also reproduced as under:-

7(5) Where the Adjudicating Authority is satisfied that-
Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

15. He has also relied upon following decisions of this Court, in support of his submission, in the case of Mr. Satyaprakash Aggarwal & Ors., Vs. Vistar Metal Industries & Ors., (2018) SCC OnLine NCLAT 264, Tek Travels pvt. Ltd. Vs. Altius Travels Pvt. Ltd., 2021 SCC OnLine NCLAT 351 and Shiv Glitz Hotels and Resorts LLP Vs. Oravel Stays Ltd., CA (AT) (Ins) No. 577 of 2024. He has also submitted that the Hon’ble Supreme Court in the case of Surendra Trading Company Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors., (2017) 16 SCC 143 has held that “Section 7(5) proviso is not mandatory as the time period of 7 days can be extended.” He has relied upon another judgment of the Hon’ble Supreme Court in the case of Dena Bank Vs. C. Shivakumar Reddy & Anr., (2021) 10 SCC 330 to contend that Section

7(5)(b) casts an obligation upon the AA to give notice to the applicant to rectify the defects in the application before rejecting the same.

16. On the other hand, Counsel appearing on behalf of the Respondent, while vehemently opposing the present appeal, has submitted that plea of the Appellant for providing opportunity to rectify the defect cannot be allowed to be accepted because the said opportunity had already been granted to the Appellant while the objection was raised by the registry on 10.10.2023. He has further submitted that at that time, in accordance with law, the period of 7 days was granted was not availed. Consequently, the application filed by the Appellant was not registered by the registry vide its order dated 18.10.2023. He has however fairly submitted that the said order dated 18.10.2023 was challenged by the appellant by way of an appeal under Rule 63 of the Rules, 2016 which was allowed on 08.02.2024 and the appeal against the order dated 08.02.2024 was got dismissed as infructuous because of subsequent events.

17. Basically, it is submitted that the application filed under Section 7 was no-nest. It is submitted that if the affidavit was not in accordance with law then the memo of appeal is a bunch of paper. It is submitted that Rule 10(1) of the Rules provides that the application under Section 7(1) has to be filed before the Adjudicating Authority in accordance with rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016. Rule 10 of the Rules referred to by the Respondent is also reproduced as under;-

10. Filing of application and application fee.—(1) Till such time the rules of procedure for conduct of proceedings under the Code are notified, the application made under subsection (1) of section 7, sub-section (1) of section 9 or sub-section (1) of section 10 of

the Code shall be filed before the Adjudicating Authority in accordance with rules 20, 21, 22, 23, 24 and 26 of Part III of the National Company Law Tribunal Rules, 2016.

(2) An applicant under these rules shall immediately after becoming aware, notify the Adjudicating Authority of any winding-up petition presented against the corporate debtor.

(3) The application shall be accompanied by such fee as specified in the Schedule.

(4) The application and accompanying documents shall be filed in electronic form, as and when such facility is made available and as prescribed by the Adjudicating Authority:

Provided that till such facility is made available, the applicant may submit the accompanying documents, and wherever they are bulky, in electronic form, in scanned, legible portable document format in a data storage device such as a compact disc or a USB flash drive acceptable to the Adjudicating Authority.

18. He has then referred to Rule 26 of the Rules, 2016 and more particularly Rule 26 (2) to contend that every petition or appeal shall be signed and verified by the party concerned in the manner provided by these rules.

The Rule 26 of the Rules, 2016 is also reproduced as under:-

“26. Endorsement and Verification.- (1) At the foot of every petition or appeal or pleading there shall appear the name and signature of the authorised representative. (2) Every petition or appeal shall be signed and verified by the party concerned in the manner provided by these rules.”

19. He has then invited our attention to Rule 34(4) of the Rules, 2016 to contend that every petition or application including interlocutory application need to be verified by an affidavit in Form No. NCLT.6. The Rule 34 with form NCLT 6 are also reproduced as under:-

“34. General Procedure. - (1) In a situation not provided for in these rules, the Tribunal may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice. (2) The general heading in all proceedings before the Tribunal, in all advertisements and notices shall be in Form No. NCLT. 4.

(3) Every petition or application or reference shall be filed in form as provided in Form No. NCLT. 1 with attachments thereto accompanied by Form No. NCLT. 2 and in case of an interlocutory application, the same shall be filed in Form No. NCLT. 1 accompanied by such attachments thereto along with Form No. NCLT. 3.

(4) Every petition or application including interlocutory application shall be verified by an affidavit in Form No. NCLT.6. Notice to be issued by the Tribunal to the opposite party shall be in Form NCLT-5.”

FORM NO. NCLT. 6 (GENERAL) [See rule 34] [HEADING AS IN FORM NCLT. 4] Company Petition No of 20.... General Affidavit Verifying Petition I,, son of... .., aged residing at... , do solemnly affirm and say as follows:- 1. I am a director/secretary/ /of... Ltd., the petitioner in the above matter [and am duly authorised by the said petitioner to make this affidavit on its behalf.] Note: This paragraph is to be included in cases where the petitioner is the Company. 2. The statements made in paragraphsof the petition herein now shown to me are true to my knowledge, and the statements made in paragraphs are based on information, and I believe them to be true. Solemnly affirmed, etc. sd/- VERIFICATION 'Note: 1.To be included when the affidavit is sworn to by any person other than a director, agent or secretary or other officer of the company. **Note:- 2. This form can be used for any other general application moved before the Tribunal with such alteration or modification in the title and the content. *****
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20. He has also referred to Rule 126 of the Rules, 2016 and submitted that the affidavit has to be conformed to the requirements of order XIX, rule 3 of Civil Procedure Code, 1908 . The said Rule is also reproduced as under:-

“126. Form and contents of the affidavit.- The affidavit shall conform to the requirements of order XIX, rule 3 of Civil Procedure Code, 1908 (5 of 1908).”

21. He has then referred to order xix rule 3 of the CPC which is also reproduced as under:-

“3. Matters to which affidavits shall be confined.—(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.”

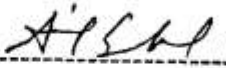
22. He has referred to the affidavit which has been filed in this case alongwith application filed under Section 7 in form 1. Although the affidavit runs into many pages as it is the replica of the petition but the verification and the affidavit which are in question are reproduced as under:-

VERIFICATION

We, the Applicant, do state on verification that what is stated herein above is true and correct to the best of our knowledge, belief and information.

Date: -07-2023.

Place : Ahmedabad.


APPLICANT.



AFFIDAVIT

I, Anil Sankhla son of Shri Brij Mohan Sankhla Male, aged about 35 years, Ahmedabad , do hereby solemnly affirm and say as follows :-

1. That I am Senior Manger of the Applicant above-named and am duly authorized by the said Applicant to make this affidavit on its behalf.
2. That the statements made herein above in the Affidavit are true to my knowledge, information and belief and I believe them to be true. All Annexures to

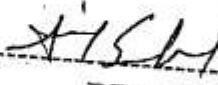
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this Affidavit are true copies of their respective
Originals.

Solemnly affirmed at Ah'd. on this 17th day of July,
2023.




DEPONENT.

S. No. 1854 28 23
SOLEMNLY AFFIRMED
BEFORE ME

NOTARY
AHMEDABAD
S. B. ARYA
17 JUL 2023

23. Counsel for the Respondent has submitted that as per Rule 126 of the Rules, 2016 and order XIX rule 3 of the CPC, the deponent has to specifically swear on oath about the para of affidavit pertaining to him knowledge and the paras based upon his belief.

24. It is submitted that since the affidavit in question is not in accordance with provisions of order XIX rule 3 much less Rule 126 of the Rules, 2016, therefore, it was defective and there is no error in the order of the Tribunal holding that the petition is to be defective. He has then argued that once the petition has been found to be defective, the Tribunal has rightly dismissed the same because it was not only defective but also nonest. In support of his submission, he has relied upon following decisions in the case of M/s A V

Industries Vs. M/s Neo Neon Electrical Pvt. Ltd., RFA (Comm) 2 /2021, Shri Mool Chand Wahi Vs. National Paints Pvt. Ltd. (1983) SCC Online P& H 651) and Star Textile Engineering Works Ltd. Vs. Gaya Textile, (1966) SCC OnLine Cal 149. He has also submitted that the defect in the petition because of the wrong affidavit cannot be cured as has been held by the Hon'ble Punjab and Haryana High court in the case of Shri Mool Chand Wahi (Supra).

25. We have heard Counsel for the parties and perused the record with their able assistance.

26. There is no dispute to the fact that the affidavit is dated 17.07.2024 and the application, filed under Section 7 in form 1, was verified and signed/notarized on 26.07.2024. Counsel for the Appellant has candidly conceded before us that the application was defective but his contention is that the said defect is curable by filing a better affidavit in support of the application. In this regard, he has relied upon Section 7(5)(b) proviso of the Code. The judgment relied upon by the Appellant in this regard i.e. Satya Prakash Aggarwal (Supra), Tex Travels Pvt. Ltd., Shiv Glitz Hotels & Resorts, Surendra Trading Company (Supra) as well as Dena Bank (Supra) support his contention because in Dena Bank (Supra) the Hon'ble Supreme Court has held that the proviso of Section 7(5)(b) obliges the AA to give notice to the applicant to rectify the defect within seven days. In the present case, no such notice was given by the Tribunal to the Appellant after noticing the defect as highlighted by the Respondent when the impugned order was passed on 18.06.2024.

27. In so far as, the contention of the Respondent is concerned, that the affidavit should have been filed in accordance with provisions of Rule 126

which has to be drafted in consonance with order XIX Rule 3 of the CPC is not dispute.

28. The only issue arises is as to whether, there is an error on the part of the Tribunal for not giving notice to the Appellant, in terms of Section 7(5)(b) proviso, before dismissing the application holding it to be defective. The judgments relied upon by the Respondent are not applicable to the facts of this case because the case of the applicant/ appellant is squarely covered by the provisions of Section 7(5)(b) proviso and Dena Bank (Supra) where the Hon'ble Supreme Court has held that the AA is obliged to give notice to the Appellant to rectify the defects within a period of 7 days.

29. It is pertinent to mention that the same provision has been provided in the Rules when the defect is noticed by the registry and 7 days time is given to the Applicant to rectify the same. The provisions for giving time to the applicant is to enable it to remove the defects so that a meritorious matter may not be dismissed on the ground of technicality. It is altogether hyper technicality.

30. We do not agree with the contention of the Respondent that when the petition was filed with defective affidavit then the petition was itself nonest.

31. No other point has been raised.

32. In view of the aforesaid facts and circumstances, we find merit in the present appeal and the same is hereby allowed and the impugned order is set aside.

33. The main CP (IB) No. 97 of 2024 is restored to its original number and the matter is remanded back to the Tribunal to decide the same on merits in accordance with law.

34. The parties are directed to appear before the Tribunal on 15th September, 2025.

35. The parties shall bear their own costs.

I.As, if any, pending stands closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

sc/rr