

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,**NEW DELHI****Company Appeal (AT) (Ins.) No. 46 of 2020****IN THE MATTER OF:****M/S SYMBOL VINIMAY PVT. LTD.**

7, Rajani Sen Road,
Kolkata – 700 026

...Appellant**Versus****CHAMPA IMPEX PVT. LTD.**

1A, Madan Mohan Burman Street,
Kolkata – 700 007

...Respondent**Present:****For Appellant:**

Ms. Shruti Agarwal, Adv.

For Respondent:

Mr. Manoj K. Singh, Ms. Vijaya Singh, Mr. Rahul Kanoujia, Mr. Anuj Jain, Mr. Priyanshu Upadhyay, Advocates.

J U D G M E N T**Per: Justice Rakesh Kumar Jain:**

This appeal is directed against the order dated 26.11.2019, passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench) in CP (IB) No. 1387/KB/2018, by which an application filed by the Appellant (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short 'Rules') against the Respondent (Corporate Debtor) has been dismissed.

2. In brief, the Appellant filed an application on 04.10.2018 under Section 7 of the Code on Form 1 in which the column required to be filled up

about the particulars of the proposed IRP (Part-3) has been left out as N.A. The particulars of financial debt (in Part IV) are provided to the effect that the Corporate Debtor had approached the Appellant for an inter corporate deposit of a sum of Rs. 10,00,000/- for a period of 90 days. The said amount was disbursed on 25.10.2017 by RTGS transfer made to the bank account of the Corporate Debtor. The inter corporate deposit was to be repaid in a period of 90 days and it would carry an interest @ 16.5 % per annum. The Corporate Debtor, after receipt of that amount issued a post-dated cheque of the principal sum and also executed a letter of acknowledgement dated 25.10.2017. It is further alleged that the term of 90 days ended on 22.01.2018 and the interest amount of Rs. 40,685/- was paid after deducting TDS but instead of repaying the principal amount of Rs. 10,00,000/- the Corporate Debtor sought for renewal of the deposit term, therefore, post-dated cheque of Rs. 10,00,000/- bearing no. 000117 dated 23.01.2018 was returned to the Corporate Debtor. The second term of 90 days commenced from 23.01.2018 and expired on 22.04.2018 and the Corporate Debtor paid interest upto 31.03.2018 of Rs. 30,740/- after deducting TDS but ever since 31.03.2018 neither the principal amount nor interest was paid. The Appellant has mentioned the date of default, in column '2' part 'IV' of form '1' as 25.04.2018 but part 'V' in which the Appellant was to provide particulars of financial debt (documents, records and evidence of default) has not been largely filled up as not applicable.

3. The application was contested by the Respondent by filing a reply to which a rejoinder was also filed. The Adjudicating Authority, from the material available on record, found that though it's the case of the Appellant

that the Respondent had approached it for an inter corporate deposit of a sum of Rs. 10,00,000/- but it has not been able to refer to any request letter, email or any other kind of request. It has also been observed that despite the insistence of the Adjudicating Authority, the Appellant failed to produce any proof of the RTGS by way of bank statement indicating that the amount has in fact been transferred from its account to the account of the Corporate Debtor. The acknowledgement dated 25.10.2017 has been disbelieved on account of interpolation as it has been held that it is partly typed and partly handwritten document. That the date 25.10.2017, interest part 16.5% and PAN Number have all been written in hand which is found to be added later on after the execution of the document and thus, the Adjudicating Authority did not repose confidence in the said document about its authenticity. In so far as the post-dated cheque no. 000117 dated 23.01.2018 is concerned, which was allegedly issued by the Respondent to the Appellant, in lieu of payment of the amount in question, was not annexed or produced before the Adjudicating Authority. The Adjudicating Authority also did not accept it to be a prudent move on the part of the Appellant to return the post-dated cheque without insisting upon a fresh cheque for the fresh transaction as it has been done earlier when it is alleged that not only the post-dated cheque was obtained by the Appellant but also an acknowledgement in writing. The Adjudicating Authority also did not accept the fact that the TDS deducted is related to the amount in question. As a matter of fact, the Adjudicating Authority was of the view that there were lot of infirmities in the pleadings of the Appellant which were not supported by any evidence which could prove the amount in question to be

a financial debt. It was also observed that there was no attempt made by the Appellant to recall the alleged debt by writing even a simple letter before filing the application. As a consequence, the application was dismissed because the Adjudicating Authority was of the view that the initiation of CIRP against the Corporate Debtor would carry an adverse effect and it cannot be initiated in arbitrary and mechanical manner.

4. Aggrieved against the aforesaid findings of the Adjudicating Authority the present appeal has been preferred. During the pendency of this appeal, the Appellant filed I.A. No. 3259 of 2022 seeking permission to place on record two additional documents as Annexure A1 and A2. Annexure A1 is the copy of the extract of bank statement of the Appellant reflecting the RTGS transfer to the Respondent and Annexure A2 is the written communication by proposed interim resolution professional dated 21.11.2019.

5. The Respondent contested the application regarding its placing on record the documents Annexure A1 and A2. The said application was dismissed in respect of document Annexure A2. But in so far as Annexure A1 is concerned, it was kept open to be considered at the time of final hearing. The order in this regard passed on 21.10.2022 is reproduced as under:

“1.This order shall dispose of I.A. No. 3259 of 2022 which has been filed for seeking permission to bring on record certain additional documents as Annexure A-1 and Annexure A-2.

2. In brief, the Applicant/Appellant filed an application under Section 7 of the Code on 04.10.2018. The application was to be filed in terms of Section 7(2) of the Code, which provides that “the application shall be filed in such form and manner as may be prescribed.” The form and manner for filing the application is provided in Rule 4 of the Insolvency and Bankruptcy (Application

to Adjudicating Authority) Rules, 2016 (in short 'Rules') which read thus:-

"4. Application by financial creditor.—(1) A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) Where the applicant under sub-rule (1) is an assignee or transferee of a financial contract, the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer.

(3) The applicant shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.

(4) In case the application is made jointly by financial creditors, they may nominate one amongst them to act on their behalf."

3. Form-1 is the printed performa of the application which has five parts. Part-1-particulars of the Applicant.

Part-2-particulars of Corporate Debtor.

Part-3-particulars of proposed IRP.

Part-4-particulars of financial debt.

Part-5-particulars of financial debt (documents, records and evidence of default).

4. Part-3 deals with the particulars of proposed IRP. The Applicant has to provide the name, address, email address and the registration number of the proposed IRP. However, the Applicant/Appellant, in the application filed under Section 7 of the Code (Form-1) filled up Part-3 in the following manner:-

Particulars of the proposed Interim Resolution Professional		
1.	Name, Address, E-mail Address & The Registration Number of The Proposed Interim Insolvency Resolution Professional	N.A.

5. The Appellant has also averred in Part-4 of the application (Form-1) as under:

Particulars of Financial Debt

1.	Total amount of debt granted date (s) of disbursement.	The corporate debtor had approached the financial creditor for an inter Corporate Deposit for a sum of Rs. 10,00,000/- for a period of 90 days. The said loan amount was disbursed by the Financial Creditor to the Corporate Debtor on the 25th October 2017 vide a RTGS transfer made to the Corporate debtor's bank i.e. Industrial Bank Limited, IFSC code No. INDB000075, A/c No. – 201001648790 under UTR No. HDFCR5201710255646909. The terms of the inter corporate deposit were that the same was to be repaid in a period of 90 days and that it would carry interest @ 16.5% per annum. The CD received the said amount and had issued a post dated cheque for the principal sum in favour of the Financial Creditor. A copy of the acknowledgment letter issued by the CD dated 25th October, 2017 is annexed hereto and is marked with the letter 'C' Pg. 10 The term of 90 days of such deposit ended on 22nd January, 2018 and the interest amount for a sum of Rs. 40,685/- was paid on such date, by the CD after deducting TDS therefrom. Instead of repaying the principal amount of Rs. 10,00,000/-, the CD had sought for renewal of the deposit term as such the post dated cheque of Rs. 10,00,000/- bearing no. 000117 dated 23rd January, 2018 was returned to the
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		CD. The second term of 90 days which commenced on and from 23rd January, 2018 expired on 22nd April, 2018 for which the CD paid the Financial Creditor interest up to 31st March, 2018 being a sum of Rs. 30,740/- after deducting TDS therefrom as opposed to a sum of Rs. 40,685/- Ever since 31st March, 2018 there has been no payment made towards the principal amount and/or the interest. Copies of the ledger as maintained by the Financial Creditor alongwith Form 26AS of the Financial Creditor reflecting the TDS paid by the CD are annexed hereto and are collectively marked with the letter 'D'
2.	Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and days of default in tabular form)	The CD owes to the financial creditor a sum of Rs. 10,00,000/- alongwith interest @ 16.5% per annum till payment. The default of the said amount has taken place from the 25th April, 2018. A copy of the tabular statement reflecting the amount due as on date is annexed hereto and is marked with the letter 'E' Pg. 13.

6. It is argued by Counsel for the Appellant that the application under Section 7 was decided on 26.11.2019 but the proposed IRP who had given the consent in Form-2 intimated the Adjudicating Authority but the same was not taken into consideration. It is thus submitted that the document Annexure A-2 which is proposed to be placed on record by way of additional evidence is the consent of the IRP.

7. In reply, Counsel for Respondent has vehemently opposed the application and submitted that the procedure which is sought to be followed by the Appellant is not provided either in the Code

or Rules. It is also argued that Form-2 contains the date as 21.11.2019 whereas the application under Section 7 was filed much earlier. It is further submitted that the Applicant/Appellant has rather averred in the Application in Form-1 that the said part does not apply to it as it has alleged as N.A. He has also argued that the Appellant should have filed an application before the Adjudicating Authority to seek amendment of the application (Form-1) so far as Part-3 is concerned if the consent of IRP was obtained on 21.11.2019 but since there was no pleadings, therefore, evidence beyond pleadings cannot be adduced by the Appellant by way of placing on record Annexure-2 (consent) of the IRP.

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

9. Before we advert to the question as to whether the application filed by the Appellant by which he wanted to place on record Annexure A2 can be allowed or not. It would be relevant to refer to Section 7 of the Code which says that:

“Section 7: Initiation of corporate insolvency resolution process by financial creditor.

*7. (1) A financial creditor either by itself or jointly with 1[other financial creditors, or any other person on behalf of the financial creditor, as may be notified² by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

3[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the

commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

4[Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.]

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending⁵ against the proposed resolution professional, it may^{J1}, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending⁵ against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall^{J2}, 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⁽ⁱ⁾ of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor,

within seven days of admission or rejection of such application, as the case may be.

10. Section 7(2) of the Code further provides that “(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.” As per section 7(2), the application has to be filed in the prescribed form which is provided in Rule 4 of the Rules. The form is also reproduced as under:

“Part-I

PARTICULARS OF APPLICANT (PLEASE PROVIDE FOR EACH FINANCIAL CREDITOR MAKING THE APPLICATION)

1. NAME OF FINANCIAL CREDITOR

2. DATE OF INCORPORATION OF FINANCIAL CREDITOR

3. IDENTIFICATION NUMBER OF FINANCIAL CREDITOR

4. ADDRESS OF THE REGISTERED OFFICE OF THE FINANCIAL CREDITOR

5. NAME AND ADDRESS OF THE PERSON AUTHORISED TO SUBMIT APPLICATION ON ITS BEHALF (ENCLOSE AUTHORISATION)

6. NAME AND ADDRESS OF PERSON RESIDENT IN INDIA AUTHORISED TO ACCEPT THE SERVICE OF PROCESS ON ITS BEHALF (ENCLOSE AUTHORISATION)

Part-II

PARTICULARS OF THE CORPORATE DEBTOR

1. NAME OF THE CORPORATE DEBTOR

2. IDENTIFICATION NUMBER OF CORPORATE DEBTOR

3. DATE OF INCORPORATION OF CORPORATE DEBTOR

4. NOMINAL SHARE CAPITAL AND THE PAIDUP SHARE CAPITAL OF THE CORPORATE DEBTOR AND/OR DETAILS OF GUARANTEE CLAUSE AS PER MEMORANDUM OF ASSOCIATION (AS APPLICABLE)

5. ADDRESS OF THE REGISTERED OFFICE OF THE CORPORATE DEBTOR

6. DETAILS OF THE CORPORATE DEBTOR AS PER THE NOTIFICATION UNDER SECTION 55 (2) OF THE CODE–

(i) ASSETS AND INCOME

(ii) CLASS OF CREDITORS OR AMOUNT OF DEBT

(iii) CATEGORY OF CORPORATE PERSON (WHERE APPLICATION IS UNDER CHAPTER IV OF PART II OF THE CODE)]

Part-III

PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL

1. NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL

Part - IV

PARTICULARS OF FINANCIAL DEBT

1. TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT

2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)

Part-V

PARTICULARS OF FINANCIAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]

1. PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)

2. PARTICULARS OF AN ORDER OF A COURT, TRIBUNAL OR ARBITRAL PANEL ADJUDICATING ON THE DEFAULT, IF ANY (ATTACH A COPY OF THE ORDER)

3. RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY (ATTACH A COPY OF SUCH RECORD)

4. DETAILS OF SUCCESSION CERTIFICATE, OR PROBATE OF A WILL, OR LETTER OF ADMINISTRATION, OR COURT DECREE (AS MAY BE APPLICABLE), UNDER THE INDIAN SUCCESSION ACT, 1925 (10 OF 1925) (ATTACH A COPY)

5. THE LATEST AND COMPLETE COPY OF THE FINANCIAL CONTRACT REFLECTING ALL AMENDMENTS AND WAIVERS TO DATE (ATTACH A COPY)

6. A RECORD OF DEFAULT AS AVAILABLE WITH ANY CREDIT INFORMATION COMPANY (ATTACH A COPY)

7. COPIES OF ENTRIES IN A BANKERS BOOK IN ACCORDANCE WITH THE BANKERS BOOKS EVIDENCE ACT, 1891 (18 OF 1891) (ATTACH A COPY)

8. LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL DEBT, THE AMOUNT AND DATE OF DEFAULT

I, hereby certify that, to the best of my knowledge, [name of proposed insolvency professional], is fully qualified and permitted to act as an insolvency professional in accordance with the Insolvency and Bankruptcy Code, 2016 and the associated rules and regulations.

[Name of the financial creditor] has paid the requisite fee for this application through [state means of payment] on [date] and served a copy of this application by registered post/speed post/by hand/electronic means to the registered office of the corporate debtor and to the board].

Yours sincerely,

Signature of person authorised to act on behalf of the financial creditor

Name in block letters

Position with or in relation to the financial creditor

Address of person signing

Instructions

Please attach the following to this application:

Annex I Copies of all documents referred to in this application.

Annex II Written communication by the proposed interim resolution professional as set out in Form 2.

Annex III Proof that the specified application fee has been paid.

Annex IV Where the application is made jointly, the particulars specified in this form shall be furnished in respect of all the joint applicants along with a copy of authorisation to the financial creditor to file and act on this application on behalf of all the applicants.

Annex V Proofs of serving a copy of the application (a) to the corporate debtor, and (b) to the Board.”

11. Rule 9 further provides that the Applicant, whenever he is required to propose to appoint an insolvency resolution professional, shall obtain the written consent in Form-2 from the Insolvency Professional for appointment as an IRP and enclose the said consent with the application in terms of Rule 4, 6 or 7, as the case may be. But when the application under Section 7 of the Code was filed by the Appellant, no consent was apparently taken as it was not intended by the Appellant that is the reason that it

has been categorically mentioned in Part-3 of Form-1 that the said part of form is not applicable to the case of the Appellant. However, Section 7(3) of the Code clearly provides that “the financial creditor shall, alongwith the application furnish-(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified; (b) the name of the resolution professional proposed to act as an interim resolution professional; and (c) any other information as may be specified by the board.” If the scheme of the Code provides that in case the Appellant intends to appoint the IRP itself without the help of the Adjudicating Authority then it has to give proposed name of the IRP and also take consent of the said IRP in form-2 which is required to be appended with Form-1 and the particulars have to be mentioned in Part 3 of Form 1. But all these necessary ingredients are conspicuous by its absence in the present application form and now the present application has been filed by the Applicant/Appellant to fill up the gap which cannot be permitted. Even otherwise, in the absence of the pleadings (the averment in Part -3 of Form 1 about the proposed IRP) the appointment of the IRP after taking his consent in form 2 cannot be allowed at this stage when the application itself has been rejected by the Adjudicating Authority on the ground that it lacks material particulars and is incomplete.

12. In view of the aforesaid facts and circumstances, we do not find any reason to allow this application in so far as document Annexure A2 is concerned and thus, the same is hereby dismissed.

13. However, regarding document Annexure A1, Counsel for the parties prays for time to argue on this issue at the time of final hearing of the appeal.”

6. Counsel for the Appellant has argued that the Adjudicating Authority has committed an error in dismissing the application despite the fact that the Respondent has acknowledged the amount in question and in this regard, she has referred to Para 6 of the Reply filed by the Respondent in which the following averments have been made:

“The amounts which were lent by the Financial Creditor to the Corporate Debtor have been squared off in the larger transaction between the parties. This was done pursuance to what had been agreed. Moreover, a part of the amount has been repaid. If necessary, I shall produce documents in connection with other legal proceedings at the time of hearing to establish the same. In any event, it is reiterated that there is no debt or default and therefore, the petition should be dismissed.”

7. She has also referred to para 11 of the reply which is also reproduced as under:

“With reference to the contents of part IV of the said petition, it is stated that the loan cannot be recovered in view of the provisions of the Bengal Money Lenders Act. The CD does not have any licence to lend money under the Bengal Money Lenders Act. Therefore, the purported loan is not recoverable. It is denied that there was any intercorporate deposit or that it was agreed that the loan would carry interest at the rate of 16.5% per annum. The cheque was issued for the purpose of comfort and cannot be said to be for security. In any event, the purported transaction is nonest and void. It is denied that the corporate debtor sought for renewal or that there was a second term as alleged or at all. It is denied that any payment was required to be made as alleged or at all. It is denied that the Corporate Debtor owes the sums mentioned or any part thereof or any interest, at any rate, as alleged or at all. It is denied that there has been any default as alleged or at all. The contents of the purported statement being Annexure E are incorrect and are denied”

8. Counsel for the Appellant has further argued that even in the reply to the memo of appeal the amount disbursed has been admitted by the Respondent that it was for the purpose of procuring dry fruits and pulses to be supplied to RSP Agencies Pvt. Ltd. using the expertise of the Respondent. It is further submitted that the amount of Rs. 10,00,000/- was transferred from the HDFC Bank account of the Appellant to the account of the Respondent and that from the acknowledgement dated 25.10.2017, it is proved that amount has been taken by the Respondent. As regards, the other infirmities in the application filed under Section 7 of the Code, it is submitted that it may be on account of inadvertence on the part of the Appellant before the Adjudicating Authority but once the transfer of amount of Rs. 10,00,000/- is there in the account of the Respondent, which has not been returned, therefore, the application should not have been dismissed.

9. On the other hand, Counsel appearing on behalf of the Respondent has vehemently argued that an application under Section 7 could only be maintained by a financial creditor in respect of financial debt and on account of default. It is submitted that firstly, the Respondent never admitted that it has received any financial debt from the Appellant that too for the time value of money. It is also submitted that the Appellant has failed to disclose as to how it has come to the conclusion that the default of the amount has taken place from 25.04.2018 as mentioned in column '2' of Part 'IV' of Form '1'. He has further argued that in its reply filed before the Adjudicating Authority there is not a word about the amount in question having been taken as a loan and also for a particular period at a particular rate of interest. Rather, it is submitted that the Respondent had filed an inter pleader suit for the payment of the dues if any of defendant No. 1 to 38 in the suit (Appellant as Defendant No. 25) by Defendant No. 39. It is submitted that in the said suit injunction was issued on 15.09.2019 that the defendants were not to claim any amount from the plaintiff no. 2/Respondent herein) in connection with the said transaction of business without due process of law. It is argued that there was no loan taken by the Respondent which may fall within the definition of financial debt, which is otherwise a sinequonon for maintaining an application under Section 7 of the Code which could be filed only by a financial creditor on the occurrence of a default by the Corporate Debtor i.e when the amount is due and become payable.

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

11. The application has been filed under Section 7 of the Code. Section 7(1) of the Code provides that a financial creditor may apply for initiation of CIRP against the Corporate Debtor when a default has occurred and Section 7(2) of the Code provides that the financial creditor shall make an application in such form and manner as may be prescribed. It further provided that the Financial Creditor shall alongwith the application furnish the record of the default recorded with the information utility or such other record or evidence of default as may be specified, the name of the resolution professional proposed to act as an IRP and any other information as may be specified by the board. During the course of hearing, Counsel for the Appellant was repeatedly asked as to how 25.04.2018 has been determined the date of default to which she could not give any answer. Moreover, the amount involved also does not fall within the definition of financial debt because the financial debt would be a debt alongwith interest if any which is disbursed against consideration for the time value of money whereas in the present case no reliance can be placed upon the alleged acknowledgement in which the rate of interest has been hand written besides other entries made by hand whereas the rest of the document has been typed. There is no initials of the parties concerned on the hand written corrections, therefore, it could not be disciphered as to whether these were the agreed term between the parties at the time when document was executed or were later on incorporated

12. Be that as it may, the intercorporate deposit is a loan is not substantiated by the Appellant. There is no error found in the finding recorded by the Adjudicating Authority particularly in para 7 of the

impugned order in which all aspects of the matter have been discussed. It has recently been held by the Hon'ble Supreme Court in the case of Vidarbha Industries Power Ltd. Vs. Axis Bank Limited, (2002) 8 SCC 352, that an application under Section 7 should not be mechanically admitted triggering the CIRP proceedings, meaning thereby, the Adjudicating Authority has to make sure, on the basis of the evidence before it that it is a fit case which requires admission.

13. Thus, looking from any angle, there is hardly any merit in this appeal which could persuade us to take a view different from the one taken by the Adjudicating Authority and hence, the present appeal is hereby dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

New Delhi

09th December, 2022

Sheetal