

Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

16th May, 2023

Subject: Judgment¹ dated 11th May, 2023 of Supreme Court in the matter M. Suresh Kumar Reddy Vs. Canara Bank & Ors. [Civil Appeal No. 7121 of 2022]

I. Brief Background:

Adjudicating Authority (AA), Hyderabad bench *vide* order dated 27.06.2022 admitted M/s Kranthi Edifice Pvt. Ltd (CD) into insolvency on the application filed by Canara Bank/FC under section 7 of the Code. NCLAT *vide* order dated 05.08.2022 dismissed the appeal against this admission order of the AA.

Against the NCLAT order, the present appeal was filed before Hon'ble Supreme Court (SC) by the suspended director of the CD. The appellant submitted that CD was granted certain contracts by the Telangana State Government, and both had requested the Bank to extend the Bank Guarantees. But the Bank did not extend some of the Bank Guarantees, which has resulted in triggering of default. The appellant submitted that the facts of this case are akin to judgement Hon'ble SC in the matter of *Vidarbha Industries Power Ltd. Vs. Axis Bank Ltd.* and that AA was not under an obligation to admit the application under Section 7.

II. Findings & Observations of the Hon'ble Supreme Court –

SC made following important findings and observations :-

- (a) In the cases of *Innoventive Industries* and *E.S.Krishnamurthy* and others, the SC had held that in case CD commits default of financial debt, AA has to merely see the records of information utility and other evidence produced by FC to satisfy that default has occurred.
- (b) Once AA is satisfied that the default has occurred, there is hardly a discretion left with AA to refuse admission under section 7 of the Code.
- (c) Even non- payment of a part of debt becoming due and payable will amount to default on the part of CD.
- (d) The SC in the *Vidarbha Industries* case has held that the AA cannot exercise discretionary power arbitrarily or capriciously unless the fact and circumstances warrant exercise of discretion in a particular manner.
- (e) The SC laid emphasis on the review petition observations that its decision in *Vidarbha Industries* case was in the setting of facts of the case and observations in the judgments are not to be read as provisions of statute.
- (f) The SC while dismissing the appeal observed that the decision in the case of *Vidarbha Industries* cannot be read and understood as taking a view which is contrary to the view take in the case of *Innoventive Industries* and *E.S.Krishnamurthy*.

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