

Case Update

Hon'ble Supreme Court Dismisses Review Filed by Axis Bank and Reaffirms That NCLT Under Section 7 (5) of The Code Has Discretionary Power to Admit/Reject an Application



On 22.09.2022, the Hon'ble Supreme Court has dismissed the Review Petition filed by Axis Bank Limited ("Axis Bank") against its Judgment dated 12.07.2022 passed in C.A. No. 4633 of 2022 filed by Vidarbha Industries Power Limited ("VIPL") wherein it held that National Company Law Tribunal ("NCLT") cannot arbitrarily and in a strait jacket manner admit Applications filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("the Code") as the legislative intent of Section 7 (5) (a) of the Code confers discretionary power on the NCLT to admit/reject an Application of a Financial Creditor under Section 7 of the Code as the Legislature in its wisdom has chosen to use the expression 'may' in Section 7 (5) (a) of the Code.

Mr. Jaideep Gupta Sr. Adv. along with Mr. Shri Venkatesh (Managing Partner), Mr. Suhael Buttan (Senior Associate), Mr. Vikas Maini (Of-Counsel) and Mr. Abhishek Nangia (Associate) of SKV Law Offices represented VIPL.

The main ground for review raised by Axis Bank was that the Hon'ble Apex Court has erred in considering the true import and views of its earlier Judgments wherein it was categorically held that the Adjudicating Authority only has to see whether there is a debt, default and whether the Application filed under Section 7 is complete in all aspects or not.

The Hon'ble Supreme Court while disposing of the Review Petition held that the Judgments cited by Axis Bank did not adjudicate upon the question so raised in the Civil Appeal, i.e., whether Section 7 (5) of the Code was mandatory or discretionary.

In fact, while doing so, it has specifically distinguished its previous ruling in *E.S. Krishnamurthy & Ors. vs. Bharath Hi-Tech Builders Pvt. Ltd.* (2022) 3 SCC 161 which was heavily relied upon by Axis Bank by opining that the core issue in *E.S. Krishnamurthy* (Supra) was whether the adjudicating authority could foist a settlement on unwilling parties and not on the interpretation of Section 7 (5) of the Code.

The Order can be accessed [here](#).