

proposal under Section 12A has not been accepted which is recorded in the order dated 09.05.2024.

6. This Tribunal subsequently vacated the interim order on 25.07.2025 and thereafter the appeal has been heard.

7. Counsel for the Appellant has submitted that the financial creditor has sanctioned the loan of Rs. 24.90 Cr. but disbursement was only of Rs. 12.50 Cr. as on 31.03.2017. It is further submitted that CD has given the documents pertaining to property by letter dated 29.03.2017, however, subsequently, Axis Bank informed that original documents are not with the Bank. He has further submitted that whereas Part IV of the section 7 application clearly mentioned about the mortgage of the said property and the original documents were received. It is submitted that worth of the CD was much more and Adjudicating Authority committed an error in admitting the application filed under Section 7.

8. Counsel for the Respondent opposing the submission of the Counsel for the Appellant and submitted that disbursement is not disputed and debt and default is admitted and finding have been returned by the Adjudicating Authority. It is submitted that with regard to the non-disbursement of full amount as sanctioned it cannot be ground for opposing the application under Section 7. It is further submitted that in so far as the document which bank subsequently communicated are not available, no steps were taken by the CD. It is submitted that debt and default having been found, section 7 was rightly admitted. It is submitted that OTS proposal has been given by the CD even during the pendency of the proceedings before the Adjudicating Authority which was not accepted by the Financial Creditor which itself indicate the existence of debt and default.

9. We have considered the submissions of the Counsel for the parties and perused the record.

10. In so far as the submission of the Appellant that sanction of Rs. 24.90 Cr. was given whereas disbursement was only Rs. 12.90 Cr. the fact that balance amount was not disbursed cannot be ground to reject the section 7 application. It is not disputed that subsequently the sanction was revised and was confined to Rs. 12.5 Cr. only.

11. In so far as the original documents of the property which was communicated by the Appellant to the Bank vide its letter dated 29.03.2017 which is at Annexure A2 to the appeal, it is true that Part IV of the Section 7 application referred to the mortgage property. There is no registered mortgage deed between the parties on record. Mortgage is claimed by deposit of title and Bank can claim mortgage of only those assets for which titles deeds are deposited and if no title deeds are deposited the claim of mortgage cannot be raised.

12. Ld. Counsel for the Appellant has submitted that mortgaged were registered. We are of the view that at this stage it is not necessary for us to express any opinion or record any finding with regard to mortgage or title of the property.

13. The Adjudicating Authority has returned a finding of debt and default, disbursement is not denied and it is not the case of the CD that amount has been repaid to the Financial Creditor. The submission of the Appellant that worth of the CD is much more than the amount claimed that may not be relevant for the application for rejecting the application under Section 7 when debt and default of more than 1 Cr. is established. The fact that the CD has given OTS during the pendency of the CIRP and also submitted 12A proposal

itself indicate the acceptance of debt and default. We do not find any error in the order of Adjudicating Authority admitting under Section 7 application.

14. Counsel for the Appellant has lastly submitted that the Appellant has still communicated to the Bank that he is ready to offer the higher amount under 12A. We make it clear that it is always open for the CD to make appropriate proposal which can be considered in accordance with law by the CoC as per Section 12A of the IBC.

15. Counsel for the RP has submitted that certain assets were sold after moratorium. The said issues are not relevant for the present proceedings and can be considered by the Adjudicating Authority.

16. With these observations, we dismiss the appeal.

17. All I.As, are disposed of.

[Justice Ashok Bhushan]
The Chairperson

[Mr. Arun Baroka]
Member (Technical)

Sheetal/NN