NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 1867 of 2025

IN THE MATTER OF:

Rajesh Jeevan Uttamchandani, ...Appellants
Erstwhile Director of
Shree Sant Kripa Appliances Pvt. Ltd.

Versus

HDFC Bank Ltd. & Anr. ...Respondents

Present:

For Appellant : Mr. Piyush Beriwal, Mr. Ankit Raj, Mr. Nikhil, Ms. Ruchita Srivastava, Ms. Neha and Mr. Dev Aaseri, Advocates.

For Respondents : Mr. Abhijeet Sinha Sr. Advocate with Mr. Aman Raj Gandhi, Mr. Vardaan Bajaj, Ms. Ojasvi Sharma, Mr. Dhaiyyah C. Shroff, Mr. Aayush Maheshwari, Ms. Sarrah Khambati and Mr. Sameer Pandit, Advocates for R1.

O R D E R
(Hybrid Mode)

28.11.2025: This appeal has been filed in the name of corporate debtor, an objection was raised by the respondent that the appeal cannot be entertained in the name of corporate debtor. The counsel for the appellant submits that appeal be permitted to file on behalf of erstwhile Director Sh. Rajesh Jeevan Uttamchandani. This appeal is permitted to be filed on behalf of Sh. Rajesh Jeevan Uttamchandani, Erstwhile Director of Shree Sant Kripa Appliances Private Limited. The memo of appeal is thus accordingly corrected as "Rajesh Jeevan Uttamchandani, Erstwhile Director of Shree Sant Kripa Appliances Private Limited." The appellant may also place amended memo of parties on record. Let memo of appeal be corrected accordingly.

2. Heard Counsel for the Appellant as well as counsel for the Respondent.

3. This appeal has been filed against the order dated 30.10.2025 passed by the NCLT, Mumbai Bench by which application filed by the HDFC Bank Ltd. Section 7 application has been admitted. Section 7 application was filed for outstanding amount of default of Rs.69,49,71,322/- along with the interest as on 30.04.2025. The Adjudicating Authority finding debt and default has admitted Section 7 application.

4. Challenging the order counsel for the appellant submits that the corporate debtor was in process of settling the dues of all the banks and offer of settlement by 70% outstanding was made which was under consideration. He further submits that State Bank of India has also in correspondence with the corporate debtor and has sent an email to deposit 10% amount for which account details were communicated. Ld. Counsel for the appellant submits that the Section 7 application cannot be initiated as the recovery mechanism, he relied on the judgment of Hon'ble Supreme Court in *HPCL Bio-Fuels Ltd. vs. Shahaji Bhanudas Bhad decided on 07.11.2024* ***2024 SCC OnLine SC 3190***.

5. It is further submitted that although CoC has been constituted but the first meeting is to take place today and hence this court may keep the meetings in abeyance for some period so that appellant may settle. Ld. Counsel for the respondent submits that offers have been made subsequent to the admission of CIRP and which are dated 27th November and as on date the counsel has no instruction with regard to stand of the bank on the said order.

6. We have considered the submissions of the parties and perused the records.

7. In so far as submission of the appellant that Section 7 application cannot be initiated as the recovery mechanism, reliance has been placed by the appellant in paragraph-99, 100 and 105 of the judgment which are as follows:-

> "99. In *Swiss Ribbons Pvt. Ltd.* v. *Union of India* reported in (2019) 4 SCC 17 this Court, speaking through R.F Nariman J., held that IBC was not a mere recovery legislation for the creditors but rather a beneficial legislation intended to revive and rehabilitate the corporate debtor. The relevant observations read as under:
>
> > *"28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that*

another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

(Emphasis supplied)

100. Similarly, in *Pioneer Urban Land & Infrastructure Ltd.* v. *Union of India* reported in (2019) 8 SCC 416, this Court reiterated that IBC is not a debt recovery mechanism. It observed that when CIRP is initiated the aspect of recovery of debt is completely outside the control of the creditor and there is no guarantee of recovery or refund of the entire amount in default. A creditor initiates insolvency under the Code not for the relief of recovery of debt but rather for rehabilitating the corporate debtor and for a new management to take over. The relevant observations read as under:

"It is also important to remember that the Code is not meant to be a debt recovery mechanism (see para 28 of Swiss Ribbons). It is a proceeding in rem which, after being triggered, goes completely outside the control of the allottee who triggers it. Thus, any allottee/home buyer who prefers an application under Section 7 of the Code takes the risk of his flat/apartment not being completed in the near future, in the event of there being a breach on the part of the developer. Under the Code, he may never get a refund of the entire principal, let alone interest. […]"

(Emphasis supplied)

105. The last distinguishing feature is that, a recovery proceeding be it a suit or arbitration is initiated by a creditor where an amount is due and is unpaid by a debtor, in other words the intention behind initiating a recovery proceeding is simpliciter for the full recovery of amount which is unpaid to it. However, in an insolvency proceeding there is no guarantee of recovery of the entire debt. A creditor opts for insolvency

where an amount of such threshold is unpaid, that the creditor has an apprehension that the debtor in its current state and under the existing management in all likelihood will be unable to repay that debt in the future i.e., there is no likely prospect of any recovery, and thus it would be beneficial to take the risk of initiating insolvency which even though does not guarantee full recovery, in order for a new management to take over the corporate debtor and to recover at least some amount of debt before it is too late. Thus, the underlying intention behind initiating insolvency is not with the intention of recovering the amount owed to it, but rather with the intention that the corporate debtor is resolved/rehabilitated through a new management as soon as possible before it becomes unviable with no prospect of any meaningful recovery of its dues in the near future."

There can be no dispute to the preposition laid down by the Hon'ble Supreme Court in the above case that Section 7 proceedings cannot be a mere recovery legislation. Proceedings of Section 7 are initiated for resolution of corporate debtor which has committed a default and there is entire mechanism under the IBC and the Regulations for resolution of the corporate debtor. Para-105 which has been relied by the appellant in the above case itself notices the risk which is taken by financial creditor for initiating IBC proceedings.

8. In the present case when corporate debtor has committed default, we are of the view that bank was fully entitled to invoke the remedy as provided under Section 7 for resolution of Corporate Debtor. The proceedings under Section 7 cannot said to be proceeding of recovery of the debt. In so far as

submission of the appellant that the appellant has submitted an offer and ready to settle with all the banks, as noted above, the Committee of Creditors having been constituted, any settlement has to be approved by the Committee of Creditors as per Section 12A. We only observe that it shall be open for the appellant to approach the bank and if there is any settlement the same can be placed before the Committee of Creditors in accordance with law.

9. Counsel for the appellant lastly submitted that in the CoC's minutes agenda it is clear that the corporate debtor was not functioning for last two years and there are no employees hence the Section 7 was the only recovery mechanism. We are unable to accept the submissions of the appellant, the mere fact that CD was not functioning for last two years cannot be a ground to not take a proceeding for resolution of the CD which has defaulted from its financial obligations. The said ground also cannot be a reason for interjecting the order.

Subject to the above observation, appeal is dismissed.

Corrected memo of parties be also incorporated.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

harleen/RR