

[2022 LiveLaw \(SC\) 817](#)

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION
INDIRA BANERJEE; J., J.K. MAHESHWARI; J.

September 22, 2022

REVIEW PETITION (CIVIL) NO. 1043 OF 2022 IN CIVIL APPEAL NO. 4633 OF 2021
AXIS BANK LIMITED versus VIDARBHA INDUSTRIES POWER LIMITED

Summary: - Supreme Court holds that there is no ground to review the the judgment in *Vidarbha Industries Power Ltd. v. Axis Bank Limited*, [2022 LiveLaw \(SC\) 587](#) which held that the National Company Law Tribunal has discretion to not admit the insolvency application filed by a financial creditor even if the corporate debtor is in default.

Insolvency and Bankruptcy Code 2016; Section 7(5) - No ground to review judgment in *Vidarbha Industries Power Ltd. v. Axis Bank Limited* which held that adjudicating authority has discretion under Section 7(5) - Apprehension that the judgment will undermine the objectives of IBC is misconceived - Observations were made in the context of the case at hand.

Judgments - It is well settled that judgments and observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case - To interpret words and provisions of a statute, it may become necessary for the Judges to embark upon lengthy discussions. The words of Judges interpreting statutes are not to be interpreted as statutes.

(Arising out of impugned final judgment and order dated 12-07-2022 in C.A. No. No. 4633/2021 passed by the Supreme Court of India)

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ORDER

This petition for review was listed for open Court hearing, since it was mentioned and submitted that this Court had overlooked the judgment of this Court in **E.S. Krishnamurthy & Ors. vs. Bharath Hi-Tech Builders Pvt. Ltd.** reported in **(2022) 3 SCC 161**, to which the attention of this Court had not been drawn. Our attention has been drawn to two paragraphs of the said judgment, which paragraphs are extracted hereinbelow for convenience.

“31. On a bare reading of the provision, it is clear that both, clauses (a) and (b) of sub-section (5) of Section 7, use the expression “it may, by order” while referring to the power of the adjudicating authority. In clause (a) of subsection (5), the adjudicating authority may, by order, admit the application or in clause (b) it may, by order, reject such an application. Thus, two courses of action are available to the adjudicating authority in a petition under Section 7. The adjudicating authority

must either admit the application under clause (a) of sub-section (5) or it must reject the application under clause (b) of sub-section (5). The statute does not provide for the adjudicating authority to undertake any other action, but for the two choices available.

xxx xxx xxx

34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute.”

The learned Solicitor General has specifically emphasised on paragraph 34 which reads “Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute.”

In paragraph 31, extracted hereinabove, to which reference has been made by the learned Solicitor General of India, this Court observed that two courses of action are available to the adjudicating authority in a petition under Section 7. The adjudicating authority must either admit the application under clause (a) sub-section (5) or it must reject the application under clause (b) of sub-section (5). The statute does not provide for the adjudicating authority to undertake any other action, but for the two choices available.

The question of whether Section 7 sub-section (5) was mandatory or discretionary was not in issue in any of the judgments cited on behalf of the Review applicant. What was in issue in **Krishnamurthy’s case (supra)** was whether the adjudicating authority could foist a settlement on unwilling parties. That issue was answered in the negative.

Learned Solicitor General of India submits that certain observations made by us in the judgment and order under review could be interpreted in a manner that might be contrary to the aims and objects of the IBC and render the law infructuous. The apprehension appears to be misconceived.

The elucidation in paragraph 90 and other paragraphs were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case.

To interpret words and provisions of a statute, it may become necessary for the Judges to embark upon lengthy discussions. The words of Judges interpreting statutes are not to be interpreted as statutes.

There are no grounds for review of the judgment and order. The Review Petition is, accordingly, disposed of.

Pending applications, if any, shall also stand disposed of.