2025 INSC 1349

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11766 OF 2025

Livein Aqua Solutions Private Limited … Appellant

versus

HDFC Bank Limited … Respondent

J U D G M E N T

SANJAY KUMAR, J

1. The short issue that arises for consideration in this appeal is whether an application under Section 7 of the Insolvency and Bankruptcy Code, 2016[1], verified on 26.07.2023 but supported by an affidavit deposed to on 17.07.2023 would be liable to be rejected at the threshold on that ground.

2. The National Company Law Tribunal, Ahmedabad Bench[2], opined so and non-suited the respondent-bank, *vide* order dated 18.06.2024 passed in C.P.(IB)/97(AHM)2024, its petition filed under Section 7 of the IBC against the appellant-company[3]. Disgruntled therewith, the respondent-bank filed an appeal in Comp. App. (AT) (Ins) No. 1534 of

1 For short, 'the IBC
2 For short, 'the NCLT'
3 For short, 'the company'

2024 before the National Company Law Appellate Tribunal, Principal Bench, New Delhi[4]. By order dated 27.08.2025, the NCLAT allowed the appeal and restored C.P.(IB)/97(AHM)2024 to its original number. The matter was remanded to be decided on merits and in accordance with law. Aggrieved thereby, the company is in appeal under Section 62 of the IBC.

3. As only the ambit and effect of the aforestated procedural aspect needs to be addressed and we are not concerned with the merits of the matter, we need not advert to the facts *in extenso*. Suffice it to state that the company availed a loan facility from the respondent-bank to the tune of ₹5.5 crores and the same came to be classified as a non-performing asset on 04.08.2019. Ultimately, the respondent-bank filed an application under Section 7 of the IBC. This application was filed in Form 1 appended to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, in consonance with Rule 4(1) therein, titled 'Application by financial creditor'. Rule 4(1) requires a financial creditor, either by itself or jointly, to make the application for initiating the corporate insolvency resolution process against a corporate debtor under Section 7 of the IBC in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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4 For short, 'the NCLAT'

4. Significantly, neither Rule 4(1) nor Form 1 requires the said application to be supported by an affidavit. It is Rule 34(4) of the National Company Law Tribunal Rules, 2016[5], that prescribes that every petition or application made before the National Company Law Tribunal shall be verified by an affidavit in Form No. NCLT.6. It would be apposite, at this stage, to note the scheme of the NCLT Rules to the extent relevant for our purposes. Part-III of the NCLT Rules is titled 'Institution of proceedings, petition, appeals etc.' Rule 20 to Rule 27 therein set out the procedural norms to be followed in every appeal or petition or application, amongst others, to be filed before the National Company Law Tribunal.

5. Rule 28 therein pertains to the scrutiny of the petition or appeal or document. Rule 28(1) states to the effect that the person in charge of the filing counter shall assign a diary number upon receipt of the petition or appeal or application; enter the particulars of what has been filed in the Register and, thereafter, cause it to be sent for scrutiny. Rule 28(2) provides that, if the appeal or petition or application is found to be defective on such scrutiny, the same shall, after notice to the party, be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders. Rule 28(3) states that the Registrar

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5 For short, 'the NCLT Rules'

may, for sufficient cause, return the said document for rectification to the party filing the same and, for this purpose, he may allow such party such reasonable time as he may consider necessary or extend the time for compliance. Rule 28(4) states that if the party fails to take steps for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the pleading or document. Part-IV of the NCLT Rules is titled 'General procedure' and comprises Rules 34 to 59. Rule 34(4) reads as follows:

> '34. General Procedure. –
> (1) to (3)……
> (4) Every petition or application including interlocutory application shall be verified by an affidavit in **Form No. NCLT.6.** …….'

6. Notably, Section 7(5)(b) of the IBC also provides that if an application for initiation of corporate insolvency resolution process by a financial creditor made under Section 7(2) thereof is found to be incomplete, the National Company Law Tribunal may, by order, reject such application. However, the *proviso* thereto states that the National Company Law Tribunal shall, before rejecting the application under Section 7(5)(b), give a notice to the applicant to rectify the defect in his application within seven days of the receipt of such notice.

7. In the case on hand, the scrutiny section of the NCLT conveyed the defects/objections in the filing of petitions/applications, including the application of the respondent-bank, but as the same were not

removed/rectified, the Joint Registrar issued Notice dated 10.10.2023 in respect of 26 petitions/applications, including the application of the respondent-bank, calling upon all concerned to remove the defects within seven days failing which suitable orders would be passed under Rule 28(3) of the NCLT Rules. However, the respondent-bank failed to refile the application after removing the defects, leading to the Joint Registrar of the NCLT refusing to register the application, *vide* order dated 18.10.2023.

8. Aggrieved by the said order, the respondent-bank filed Appeal No. 4 of 2024 under Rule 63 of the NCLT Rules. Rule 63 provides that any person aggrieved by the decision of the Registrar in the context of the scrutiny of the petition/application, as provided in Part-III and elsewhere in the Rules, may file an appeal against such order to the President of the Principal Bench and at other places, to a Member of the Bench designated by the President and the decision on the said appeal shall be final. The respondent-bank's appeal was allowed by the NCLT on 08.02.2024. Thereby, the order dated 18.10.2023, passed by the Registrar of the NCLT was set aside and another opportunity was given to the respondent-bank to remove the defects within seven days, subject to payment of costs.

9. Aggrieved by this order, the company preferred CA (AT) (Ins) Nos. 770-771 of 2024 before the NCLAT. These appeals were, however, dismissed as infructuous on 15.07.2024. This was obviously due to the fact that the application filed by the respondent-bank under Section 7 of

the IBC came to be rejected on 18.06.2024 as the defects therein remained unattended to, despite the order dated 08.02.2024.

10. Aggrieved by the rejection of its application under the order dated 18.06.2024, the respondent-bank filed an appeal before the NCLAT. Therein, while conceding that its application was defective, the respondent-bank contended that the defect was curable by filing of a better affidavit in support of the application. Countering this argument, the company contended that the very filing of the application by the respondent-bank was *non est* as it was not in keeping with Rule 10(1) of the NCLT Rules. Rule 10(1) states to the effect that, till such time the rules of procedure for conduct of proceedings under the IBC were notified, an application under Section 7 of the IBC should be filed in accordance with Rules 20, 21, 22, 23, 24 and 26 in Part-III of the NCLT Rules.

11. The NCLAT noted that the *proviso* to Section 7(5)(b) of the IBC was not adhered to by the NCLT and held that, in the light of the law laid down by this Court in ***Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and another***[6], the rejection of the application filed by the respondent-bank could not be sustained. In that regard, the NCLAT held that when an application is filed with a defective affidavit it would not be *non est* on that ground as the defect can be cured. However, having said

6 (2021) 10 SCC 330

so, the NCLAT chose to restore the company petition straightaway and remanded the matter to the NCLT for decision on merits, without requiring the defective affidavit to be cured.

12. Aggrieved thereby, the company is in appeal before us. By order dated 15.09.2025, this Court stayed further proceedings in C.P.(IB)/97(AHM)2024 on the file of the NCLT.

13. Admittedly, no notice was given to the respondent-bank under the *proviso* to Section 7(5)(b) of the IBC. The notice dated 10.10.2023 was a consolidated notice issued by the Joint Registrar of the NCLT in relation to 26 petitions/applications, calling upon all concerned to take notice and to remove the defects therein within a period of seven days, failing which all such cases would be dealt with under Rule 28(3) of the NCLT Rules. This notice was put up on the NCLT's website as well as the notice board/cause list of the NCLT. The respondents-bank's application under Section 7 of the IBC found mention at Serial No. 6 of the tabulated statement giving the details of 26 defective petitions/applications.

14. Similarly, the order dated 18.10.2023 passed by the Joint Registrar of the NCLT was in relation to 42 defective petitions/applications. Stating that sufficient time had been granted to all concerned to rectify/remove the defects, the Joint Registrar exercised power under Rule 28(4) of the NCLT Rules and declined to register the petitions/applications set out in Annexure A, excepting those matters in which compliance by way of

removal of defects had been made. The respondent-bank's application found mention at Serial No. 6 in Annexure A. This order was also put up on the NCLT's website and the notice board/cause list of the NCLT.

15. There was no mention either in the notice dated 10.09.2023 or the order dated 18.10.2023 of the *proviso* to Section 7(5)(b) of the IBC. Pertinently, the *proviso* to Section 7(5)(b) of the IBC requires the notice thereunder to be given to the applicant itself to rectify the defect in the application within seven days of the receipt of such notice. In this regard, Rule 38 of the NCLT Rules, titled 'Service of notices and processes' assumes significance as Rule 38(5) therein provides that notice or process may also be served on an authorised representative of the applicant or the respondent, as the case may be, in any proceeding or on any person authorised to accept a notice or a process, and such service on the authorised representative shall be deemed to be proper service. Rule 38(5), thus, permits service of notice on the authorized representative of the applicant or the respondent, as the case may be.

16. In ***Dena Bank*** (*supra*), this Court had observed as under:

> **'91.** Furthermore, the *proviso* to Section 7(5)(*b*) IBC obliges the adjudicating authority to give notice to an applicant, to rectify the defect in its application within seven days of receipt of such notice from the adjudicating authority, before rejecting its application under clause (*b*) of sub-section (5) of Section 7 IBC. When the adjudicating authority calls upon the applicant to cure some defects that defect has to be rectified within seven days. There is no penalty prescribed for inability

> to cure the defects in an application within seven days from the date of receipt of notice, and in an appropriate case, the adjudicating authority may accept the cured application, even after expiry of seven days, for the ends of justice.'

Therefore, issuance of a notice to an authorized representative of the respondent-bank was not enough to satisfy the mandate of the *proviso* to Section 7(5)(b) of the IBC. The IBC, being the substantive legislation relating to the application filed by the respondent-bank under Section 7 thereof, the notice to cure the defects therein necessarily had to be given under the said provision and compliance with the Rules, independently framed for the National Company Law Tribunal, was not sufficient.

17. Further, we are not persuaded to accept the argument of the learned senior counsel for the company that the defective affidavit filed in support of the respondent-bank's application under Section 7 of the IBC was sufficient to hold the application itself liable to be rejected on the ground of being *non est*. Perusal of the objection raised by the company itself, in para 4 of its additional affidavit dated 02.04.2024 filed before the NCLT, indicates that it had stated that the petition deserved to be dismissed as 'defective' and not on the ground that it was '*non est'*. This argument was, however, advanced before the NCLAT and, once again, before us. Mere filing of a 'defective' affidavit in support of an application would, however, not render the very application *non est* and liable to be rejected on that ground as it is neither an incurable nor a fundamental defect.

18. As pointed out by this Court in ***Vidyawati Gupta and others vs. Bhakti Hari Nayak and others***[7], rules of procedure are made to further the cause of justice and not to prove a hindrance thereto. Again, in ***Uday Shankar Triyar vs. Ram Kalewar Prasad Singh and another***[8], this Court pointed out that non-compliance with any procedural requirement relating to an application for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates, and procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. It was further pointed out that procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use.

19. On the above analysis, we are of the opinion that, even though the Registry of the NCLT issued process under Rule 28 of the NCLT Rules, the same was insufficient as there was no communication of a notice under the *proviso* to Section 7(5)(b) of the IBC at any time. We, therefore, find no error having been committed by the NCLAT in holding to this effect. However, the NCLAT ought to have asked the respondent-bank to cure the defective affidavit at least at that stage instead of ignoring the same and directing the NCLT to proceed to hear the company petition on merits and in accordance with law. To that extent, the NCLAT was in error.

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7 (2006) 2 SCC 777
8 (2006) 1 SCC 75

20. The appeal is accordingly disposed of directing the respondent-bank to cure the defects in C.P.(IB)/97(AHM)2024, including the defective affidavit, within seven days from today, and the National Company Law Tribunal, Ahmedabad Bench, shall thereupon take up the matter for hearing in accordance with law and due procedure.

Parties shall bear their respective costs.

……...J
[SANJAY KUMAR]

……...J
[ALOK ARADHE]

New Delhi;
November 24, 2025.